

Frog Education Ltd – Terms and Conditions of Business

DEFINITIONS

In these Terms and Conditions, unless the context requires, the following words and terms bear the following meanings:

Agreement means the agreement formed pursuant to clause 1 for the supply of the Frog Platform and Services (as applicable) incorporating these terms and conditions and the Licence set out in Schedule 1;

Commencement Date means the date on which this Agreement enters into force in accordance with clause 1;

Confidential Information means all information in respect of the business of a party including, without prejudice to the generality of the foregoing, any ideas; business methods; finance; prices; business, financial, marketing, development or manpower plans; customer lists or details; computer systems and software; products or services, including but not limited to know-how or other matters connected with the products or services manufactured, marketed, provided or obtained by a party; and information concerning relationships with actual or potential clients, customers or suppliers and the needs and requirements of a party and of such persons; and any other information which, if disclosed, will be liable to cause harm to that party;

Customer means the party specified in the Order Form requesting the supply of Software and/or Services from Frog;

DPA Law has the meaning given in clause 14.1;

End User means the Customer and any other person using the Software as permitted by the Customer;

Excluded Services means the excluded services set out in a Proposal or otherwise notified to the Customer in writing;

Fees means the Frog Platform licence fees and Service fees set out in the Order Form as amended from time to time in accordance with this Agreement;

Frog means Frog Education Limited (registered number 3935677), whose registered office is at 2nd Floor West, Bowling Mill, Dean Clough Mills, Halifax, West Yorkshire HX3 5AX;

Frog Platform means the websites, applications, mobile applications, platforms and Software to be provided by Frog to the Customer as described in the proposals as set out in the Order Form;

Frog Software means any software owned by Frog which Frog provides to the Customer as set out in an Order Form;

Hosting Services means the hosting services provided by Frog to enable the Customer to access the Software (where applicable);

Initial Term has the meaning given in clause 9.1;

Insolvency Event means that the Customer: (a) becomes the subject of a voluntary arrangement under Section 1 of the Insolvency Act 1986; (b) is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; (c) has a receiver, supervisor, manager, administrator or administrative receiver appointed in respect of it or over all or any parts of its undertaking, assets or income; (d) has passed a resolution for its winding up; or (e) has a petition presented to any Court for its winding-up;

Intellectual Property Rights means any and all patents, trade marks, trade names, copyright, moral rights, rights in design, rights in

databases, know how and all or other intellectual property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating to them;

Licence means the licence between Frog and the Customer set out in Schedule 1;

On-Line Documentation means the documentation accessible on-line as part of the Software as amended and updated from time to time;

Order Form means the signed proposal which sets out the Software and/or Services (as applicable) provided by Frog to the Customer and signed by the Customer prior to the date of this Agreement;

Product Description means the product description of the Software and/or services to be provided by Frog to the Customer;

Proposal means the proposal document provided by Frog to the Customer prior to the date of this Agreement which sets out a description of the Software and/or Services, also referred to as the Order Form;

Recommended System Requirements means the system requirements set out by Frog, available at <https://froglms.com/system-requirements> and as may be amended from time to time;

Renewal Term has the meaning given in clause 9.1;

Representatives means the nominated representative of each party as notified from time to time;

Services means the services, including without limitation the Hosting Services, described in the Frog Proposal or Order Form;

Software means the Frog Software and/or Third Party Software to be provided by Frog to the Customer as described in the Proposals as set out in an Order Form;

Third Party Software means any software owned by third parties which Frog provides to the Customer as set out in an Order Form;

User Content means any content, application, resource, or any other object that the Customer or its End Users uploads onto the Frog Platform;

Warranty Period means the period of 90 days from the date of delivery of the relevant Frog Software or such other warranty period as the parties agree in writing;

Working Day means any day other than a Saturday or Sunday or a public or bank holiday in England; and

Year means a period of 365 days from the Commencement Date or any anniversary of the same (or when that period includes a 29 February, 366 days).

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1. FORMATION

1.1 The Agreement will be upon the terms of this Agreement, to the exclusion of all other terms and conditions (including any Customer terms and conditions) and all previous oral or written representations.

1.2 An order for the Software and/or Services must be submitted by the Customer on Frog's Standard Order Form or signed acceptance of a written proposal and Frog will accept the Customer's order by sending Frog's standard acknowledgement of Order Form to the Customer. The Agreement is only formed when Frog has sent its standard acknowledgement of Order Form to the Customer. No Agreement will exist prior to service of such acknowledgement of Order Form.

2. FROG OBLIGATIONS

2.1 Subject to payment of the Fees by the Customer and the Customer complying with its other obligations under the Agreement, Frog shall in accordance with the provisions of the Agreement (in each case, where relevant):

2.1.1 grant the Customer the Licence;

2.1.2 procure the Customer a licence to use any Third Party Software on the Third Party Software licensors' then-current standard terms (where necessary);

2.1.3 install and/or deploy the Software onto agreed hosting; and

2.1.4 provide the Services.

3. SERVICES

3.1 Subject to payment of the Fees relating to the Services, Frog shall perform the Services in accordance with reasonable care and skill to be expected of a prudent, competent and properly qualified professional services provider experienced in the provision of like services of a size, scope, nature and complexity to the Services.

3.2 Frog shall be entitled to charge its then current standard rates in respect of any Excluded Services that it performs at the Customer's request.

4. CUSTOMER OBLIGATIONS

4.1 The Customer will promptly provide all reasonable assistance requested by Frog including, but not limited to:

4.1.1 appointing a nominated representative for the purposes set out in the Proposals;

4.1.2 promptly following the reasonable recommendations of Frog, where Customer agrees with such recommendations;

4.1.3 co-operate fully with Frog in respect of the Services and accurately and quickly answering all questions asked by Frog in connection with performing the Services;

4.1.3.1 if applicable, at its expense, provide suitable remote Internet access to the Software to allow Frog to perform any maintenance Services;

4.1.4 ensuring that all the Customer's systems shall meet the Recommended System Requirements to be able to access the Frog Platform at the required standard;

4.1.5 complying with the terms of the Licence and any terms relating to Third Party Software (if any have been agreed).

4.2 the Customer represents and warrants for itself and on behalf of its End Users that it or the applicable End User owns and controls all of the rights to the User Content, and has the lawful right to post the User Content on the Frog Platform. The Customer shall not and shall ensure Users shall not submit User Content protected by copyright, trademark, patent, trade secret, moral right, or other intellectual property or proprietary right without the express permission of the owner of the respective right.

5. INTELLECTUAL PROPERTY RIGHTS

As between Frog, the Customer and/or any End User(s), all Intellectual Property Rights in the Frog Software and the Services are and shall remain the property of Frog and, except as permitted in the Agreement, the Customer and/or End User(s) shall have no right in or to the Frog Software, Third Party Software or Services.

6. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

6.1 Frog shall indemnify the Customer against all costs and damages awarded under any final judgment by a court of competent jurisdiction (or which are agreed by Frog in settlement) in respect of any claim that the Customer's possession or use of the Frog Software in accordance with this Agreement infringes the Intellectual Property Rights of any third party.

6.2 The indemnity set out in clause 6.1 is subject to:

6.2.1 the Customer giving Frog prompt notice, in writing, of the details of any claim;

6.2.2 Frog having sole conduct and control of any claim or action which is within the scope of the indemnity including any related settlement negotiations;

6.2.3 the Customer not making any statement prejudicial to Frog; and

6.2.4 the Customer giving Frog all reasonable help in connection with the claim or action (in which case, Frog may pay the Customer's costs, which must be proper and reasonable).

6.3 If any claim is made against Frog or the Customer that the Customer's possession or use of the Frog Software infringes any third party's Intellectual Property Rights, Frog shall at its option and expense have the right to:

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- 6.3.1 negotiate a licence for the Customer for the continued use of the Frog Software in accordance with the Agreement;
- 6.3.2 modify the Customer's copy or copies of the Frog Software so as to perform in accordance with the agreed Product Description in all material respects and to avoid the claim of infringement or any interlocutory injunction or court order in respect of the Frog Software; or
- 6.3.3 if none of the above are reasonably practicable, Frog may terminate the Agreement and refund to the Customer all Fees relating to the Frog Software paid by the Customer under this Agreement. This does not affect the indemnity described in clause 6.1
- 6.4 Frog's obligations under this clause 6 shall not apply in the event that the claim or legal action results from:
- 6.4.1 use of a penultimate release of the Software than Frog's current release;
- 6.4.2 use of the Software other than in accordance with the Agreement; or
- 7. WARRANTY**
- 7.1 Subject to clause 7.3 and clause 10.1, the parties acknowledge and agree that the Software and/or Services are provided "as is" with no warranty, all conditions, warranties and stipulations, express or implied, statutory, customary or otherwise of any kind which, but for such exclusion, would or might subsist in favour of the Customer. Subject to clause 7.3 and clause 10.1 Frog expressly excludes any and all warranties and conditions, to the maximum extent permitted by law.
- 7.2 Subject to clause 7.3 and without prejudice to the generality of clause 7.1 Frog does not:
- 7.2.1 represent or warrant that the Software and/or Services are free of inaccuracies, errors, bugs, or interruptions, or are reliable, accurate, complete, or otherwise valid;
- 7.2.2 warrant that the functions contained in the Software will meet the Customer's or End User's requirements or that the access to or operation of the Frog Platform will be uninterrupted or error free;
- 7.2.3 provide any warranty in respect of any Third Party Software supplied in agreement (where applicable) with the Customer, but will transfer to the Customer the benefit of any warranties which (a) Frog receives in respect of any Third Party Software; and (b) which are capable of transfer to the Customer without further charge or formality.
- 7.3 Frog warrants that during the Warranty Period, that the Frog Software will be of satisfactory quality and be free from material defects in design, materials or workmanship.
- 7.4 If, at any time during the Warranty Period, the Customer becomes aware of a breach of the warranty at clause 7.3, the Customer will give written notice of the breach to Frog,
- such notice to be given within 30 days after the Customer becomes aware of the breach and prior to expiry of the Warranty Period. Following receipt of the Customer's written notice in accordance with this clause 7.4 and subject to clause 10.1, Frog's only liability for breach of the warranty at clause 7.3 will be to repair or replace the relevant Frog Software.
- 7.5 The Customer's only remedy for breach of the obligation at clause 7.4 will be in damages.
- 7.6 Each Party warrants and represents to the other that:
- 7.6.1 it has full capacity and authority to enter into and to perform this Agreement;
- 7.7 it is solvent and able to perform all of its obligations under this Agreement and will remain so throughout the term of this Agreement;
- 7.8 there are no actions, suits or proceedings pending or, to its knowledge, threatened against or affecting it before any court or administrative body or arbitration tribunal; and
- 7.9 once duly executed, this Agreement will constitute its legal, valid and binding obligations.
- 7.10 Subject to clause 10.1, Frog shall not have any liability (whether in contract, tort, misrepresentation, restitution, under statute or otherwise) for a breach of the warranty at clause 7.3 if:
- 7.10.1 the Customer does not comply with clause 7.4 in respect of the breach;
- 7.10.2 the relevant defect was caused or exacerbated by improper use, handling, alteration, installation, repair, maintenance, storage or failure to comply with instructions provided by Frog or third party.
- 8. PRICING**
- 8.1 Frog shall invoice the Customer for the Fees. Invoices for all sums due under this Agreement shall (unless otherwise stated) be due for payment within 30 days from the date of receipt of invoice. For the avoidance of doubt, all Fees will be invoiced as per the agreed payment plan.
- 8.2 All sums payable by the Customer under this Agreement are expressed exclusive of value added tax, which shall also be paid by the Customer at the prevailing rate subject to the provision by Frog of a valid value added tax invoice.
- 8.3 After the Initial Term of this Agreement Frog will be entitled to vary the Fees at any time by giving at least 60 days' prior written notice to the Customer. The variation will be effective from the first day of the next Year following expiry of the notice (or, if later, the date specified in the notice) and will apply to the relevant Frog Platform and/or Services, (as applicable) as specified in the variation notice on or after the

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- date from which the variation is effective (whether ordered before, on or after that date).
- 8.4 Hosting is provided on a 'fair and reasonable usage' basis. If, at any time whilst using the Hosting Services, the Customer is deemed to use an excessive amount of disk storage space outside of the amount included in the Proposal or the Order Form, Frog reserves the right to charge the Customer. Fair warning will be provided first allowing the customer the opportunity to reduce storage and/or explain the use is within 'fair and reasonable'.
- 8.5 In the event that payment of any sum due to Frog from the Customer is delayed beyond 14 days from the date of payment of the invoice, then Frog reserves the right to charge interest on the overdue sum from the due date until the date of actual payment at the rate of 3% per annum above the prevailing base rate of HSBC Bank plc.
- 8.6 Frog and the Customer agree to use their respective reasonable endeavours to resolve any dispute relating to correctness or completeness of any invoice. Where only part of an invoice is disputed the Customer shall pay the undisputed amount in accordance with clause 8.1. The disputed invoice will be dealt with in accordance with clause 13.
- 8.7 In the event that the Customer fails to pay any agreed undisputed sum in accordance with clause 8.6 above due to Frog on or by its due date for payment, Frog may suspend performance of its obligations under this Agreement by giving the Customer not less than 14 days' written notice including, without limitation:
- 8.7.1 suspend provision of the Services, until payment is received by Frog;
- 8.7.2 disabling the Customer's access to the Frog Platform.
- 8.8 Subject to deductions made in accordance with clause 8.6, the Customer will pay all sums under this Agreement without any set-off, restriction or condition and without any deduction for or on account of any counterclaim.
- 9. TERM AND TERMINATION**
- 9.1 Subject to earlier termination in accordance with one of the other provisions of this clause or as set out elsewhere in the Agreement, the Agreement shall (unless otherwise agreed by the parties in the Order Form) take effect from the Commencement Date or effective date shown on the Proposal or Order Form and will continue for the period of time specified (the "Initial Term") on the Order Form. The term of the agreement shall extend for a period of 12 months, or such other period agreed on the Order Form ("Renewal Term") at the end of the Initial Term. At the end of each Renewal Term and, without prejudice to clause 8.3, the Fees payable in respect of such Renewal Period will be Frog's applicable standard rates at that time. This Agreement shall not continue if either party gives written notice to the other party, not less than 60 days before the end of the current Renewal date.
- 9.2 In the event that this Agreement expires or is terminated for any reason, the Customer will only be entitled to any refund of any Fees or rates paid to Frog in advance where the Customer has terminated the Agreement under clause 9.5 below.
- 9.3 This Agreement may be terminated immediately by either party by giving not less than seven days' written notice to the other if the other suffers an Insolvency Event.
- 9.4 Frog may terminate this Agreement immediately if:
- 9.4.1 the Customer has failed to pay any sums due to Frog under this Agreement within 30 days of the dates on which any such sums are due provided it has given at least 30 days written notice to Customer of such non-payment prior to exercising this clause; or
- 9.4.2 the Customer has committed a material breach of the Agreement and (in the case of a breach capable of being remedied) this has not been remedied within 30 days of a written request to remedy the breach.
- 9.5 The Customer may terminate this Agreement immediately if Frog has committed a material breach of the Agreement and (in the case of a breach capable of being remedied) this has not been remedied within 30 days of a written request to remedy the breach.
- 9.6 Any termination of this Agreement under this clause 9 is without prejudice to any other rights or remedies a party may be entitled to under this Agreement or at law. It does not affect any accrued rights or liabilities of either party nor any provision which is expressly or by implication intended to come into force on, or continue in force after, termination.
- 9.7 Any other provisions which expressly or impliedly continue to have effect after expiry or termination of this Agreement and the Licence shall survive expiry or earlier termination of this Agreement.
- 10. LIMITATION OF LIABILITY**
- 10.1 Nothing in this agreement excludes or limits Frog's liability to the extent that any applicable law precludes or prohibits any exclusion or limitation of liability. The duties of Frog shall be confined to those expressly set forth in this agreement, and no implied duties are assumed by or may be asserted against Frog.
- 10.2 This clause sets out each party's entire liability (including any liability for the acts and omissions of its employees, agents or subcontractors) to the other in respect of:
- 10.2.1 any breach of its contractual obligations arising under or in connection with this Agreement;
- 10.2.2 any representation, statement, negligence, breach of statutory duty or other tortious act or omission arising under or in connection with this Agreement; and

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- 10.2.3 any damage to property.
- 10.3 Without prejudice to clause 7.1, Frog is not responsible for any problems of any nature arising from the use of the Frog Platform for purposes for which it was not designed (the purposes for which it was designed being those apparent from the Product Description agreed at purchase).
- 10.4 Subject to clause 10.1, Frog's total aggregate liability to the Customer shall be limited to the annual contract fees paid in the year immediately preceding the event giving rise to the first such claim to occur.
- 10.5 Subject to clause 10.1, neither party shall be liable to the other party for any consequential, incidental, special, punitive, or exemplary damages, or any loss of revenue, sales, opportunity, profits, goodwill, data or data use. Frog shall not be liable to the Customer for any loss or corruption of data, software or database configuration held by the Customer (whether before or after termination of this Agreement) which could have been avoided by the Customer keeping full back-up copies of such data, software or database configuration in accordance with good data processing practice.
- 10.6 Frog shall procure and maintain policies of insurance in amounts suitable to cover its liabilities arising under this Agreement.
- 10.7 This clause 10 shall have continuing effect after termination of this Agreement, for whatever reason.
- 11. CONFIDENTIALITY**
- 11.1 All Confidential Information given by one party to the other, or otherwise obtained or developed by one party relating to the other, shall be kept secret and confidential by the receiving party and shall not be used or disclosed other than for the purposes of the proper performance of this Agreement or with the prior written consent of the other party.
- 11.2 The obligations of confidentiality in this clause shall not extend to any matter which the receiving party can show:
- 11.2.1 is in, or has become part of, the public domain other than as a result of a breach of the obligations of confidentiality under this Agreement;
- 11.2.2 was independently disclosed to it by a third party entitled to disclose the same.
- 11.3 Neither party shall be in breach of this clause where Confidential Information is required to be disclosed under any applicable law or by order of a governmental body or authority of competent jurisdiction.
- 11.4 Frog may disclose information to any regulator, sub-contractor or service provider to it. Such information will be disclosed only to parties themselves having a confidentiality agreement with Frog, under which such information will be kept secret and confidential.
- 11.5 The restrictions contained in this clause shall continue to apply after termination of this Agreement without limit in time.
- 12. CUSTOMER ENDORSEMENT**
- Frog will have the right to use the Customer's name and logos and the fact that the Customer is a customer of Frog in any brochure or advertising material issued by Frog provided that Frog has obtained the Customer's prior written consent to such use, and shall only use the Customer's name and logos in accordance with the Customers branding guidelines as notified to Frog from time to time.
- 13. DISPUTE MANAGEMENT**
- 13.1 Frog and the Customer shall use all reasonable endeavours to negotiate in good faith and settle amicably any dispute that may arise out of or in connection with this Agreement through negotiations between Representatives of the parties, who have authority to settle the same.
- 13.2 Notwithstanding anything contained hereunder, the Customer agrees and acknowledges that no dispute resolution or litigation will be pursued by the Customer for any breach of these Terms until and unless Frog has had an opportunity to cure any alleged breach. The Customer agrees to provide Frog with a detailed description of any alleged failure and a description of the steps that the Customer understands must be taken by Frog to resolve the failure. Frog shall have thirty (30) days from its receipt of the Customer's notice to complete the cure.
- 13.3 If appropriate Representatives of the parties cannot settle any such dispute amicably through ordinary negotiations, the dispute shall be referred to the Managing Directors (or equivalent) of each party who shall meet in order to resolve the dispute.
- 13.4 If any dispute is not resolved within 30 days (or such longer period as may be mutually agreed) of such referral to the Managing Directors (or equivalent) then the dispute, at the election of either party, may be submitted to a court of competent jurisdiction, or if the parties otherwise agree, some other alternative dispute resolution forum.
- 14. DATA PROTECTION**
- 14.1.1 During the term of this Agreement, the parties shall comply with all the relevant and applicable provisions of the Data Protection Act 2018 (and any re-enactment or amendment) and General Data Protection Regulation (EU Regulation 2016/679) (and any re-enactment or amendment) or the data protection principles contained therein and all similar laws, regulation and mandatory guidelines (the **DPA Law**) as the same relate to the subject matter of this Agreement.
- 14.2 Each party agrees that, at the other party's request, it shall provide such reasonable assistance as may reasonably be required to enable the requesting party to comply with the DPA Law as such compliance relates to this Agreement.
- 14.3 Frog shall not process and/or transfer, or otherwise directly or indirectly disclose, any personal data in or to countries

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outside the United Kingdom without the Customer's prior written consent (which may be refused or granted subject to such conditions as you deem necessary).

14.4 Frog shall at all times implement and maintain appropriate technical and organisational measures to protect personal data against a breach.

15. GENERAL

15.1 Any notices shall, unless otherwise expressly stated, be in writing and shall be given by sending the same by e-mail or, first class post to the other party's registered office address. Any notice sent by first class post shall be deemed to have been delivered two Working Days after its posting. Any notice given by e-mail shall be deemed to have been delivered on the next Working Day following transmission.

15.2 Either party may not assign, novate, transfer or subcontract any rights or obligations under this Agreement without the other's prior written consent save within its group of companies.

15.3 Failure by either party to exercise or enforce any right conferred (which, for the avoidance of doubt, includes, without limitation, Frog's right to charge any costs and/or expenses at any time) shall not be deemed to be a waiver of any such right nor operate so as to prevent exercise or enforcement thereof or of any other right on any later occasion.

15.4 This Agreement may only be varied or amended in writing and any such variation or amendment must be by a duly authorised representative of each of the parties.

15.5 This Agreement contains the entire understanding between the parties with respect to its subject matter and neither party will have any remedy in respect of, any misrepresentation, representation or statement which is not expressly set out in the Agreement.

15.6 Each party acknowledges that it is not entering into this Agreement in reliance on any representation of the other except those contained in this Agreement.

15.7 Nothing in clauses 15.5 or 15.6 will be interpreted or construed as limiting or excluding the liability of any person for fraud or fraudulent misrepresentation.

15.8 In the event that any provision of this Agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable or indications of the same are received by either of the parties from any relevant competent authority, then such provision shall be severed from this Agreement and the remaining provisions shall remain in full force and effect.

15.9 The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of Contracts (Rights Of Third Parties) Act 1999 by any person not a party to it.

15.10 Neither party shall be liable to the other in any manner whatsoever to the extent it is unable to perform any of its obligations under this Agreement (except for the obligation to pay) due to any cause beyond its reasonable control including but not limited to acts of God, war or national emergency, riots, civil commotion, fire, explosion, flood, epidemic, lock-outs (whether or not by that party), strikes and other industrial disputes (in each case, whether or not relating to that party's workforce), acts of Government, highway authorities, telecommunications network operators or other competent authorities or interruption of, or inability in obtaining, supplies or services from third parties. If a party is affected by any such cause it will promptly notify the other.

15.11 Subject to clause 13, this Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed and interpreted in accordance with the laws of England and Wales and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

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Schedule 1 - License

1. Subject to the Customer paying the Fees relating to the Frog Platform, Frog grants to the Customer a non-transferable, nonexclusive licence to use the Frog Platform in accordance with the terms contained in this Agreement solely for the Customer's training and educational operations.
2. The Customer shall not (nor permit End Users or any third party to):
 - 2.1 except as permitted by law, adapt, alter, amend, modify, reverse, engineer, decompile, disassemble or decode the Software or translate the Software;
 - 2.2 assign, transfer, sell, lease, rent, charge or otherwise deal in or encumber the Software or its rights in respect of the Software;
 - 2.3 remove or alter any copyright or other proprietary notice on or in the Software;
 - 2.4 use the Software in any manner not in accordance with this Agreement;
 - 2.5 sell any hardware on which copies of the Software have been stored without first ensuring that the Software has been deleted from it and that the relevant storage medium has been overwritten to prevent reconstruction of the Software;
 - 2.6 use the Software and/or any Services other than for its own internal purposes and, without limitation, shall not therefore use the Software and/or any Services to provide computer bureau, outsourcing, facilities management or similar services for the benefit of any third party; or
 - 2.7 use the Software and/or any Services to create, make available, transmit or upload any defamatory, offensive or abusive material, material of obscene or menacing character or any other material which is likely to cause harm to any computer system or is in contravention of any applicable law and shall indemnify Frog against all costs, damages and losses in respect of a breach of this paragraph 2.7.
3. The Customer will:
 - 3.1 ensure that all persons from time to time having access to the Software, the On-Line Documentation and/or Services including End Users do not copy or duplicate them and make no disclosure relating to the Software and/or such Services to any third party;
 - 3.2 effect and maintain adequate security measures to safeguard the Software and On-line Documentation from theft or access by any person other than:
 - 3.2.1 End Users accessing the facilities offered to the Customer and End Users by the Software as specified in the On- Line Documentation; or
 - 3.2.2 employees of the Customer acting in the normal and proper course of their employment;
 - 3.3 keep a full back-up copy of the Software and data in accordance with best computing practice;
 - 3.4 only issue passwords which give administrative access to the Software to appropriate End Users;
 - 3.5 within 5 Working Days of any written request from Frog, provide a written up to date list of the End Users; and
4. The Customer will be entitled to allow End Users to access the facilities offered to End Users by the Software provided that the number of users does not increase by more than 5% above the number declared as set out in the Order Form. In the event that the number of Users increases by more than 5% above the stated number:
 - 4.1 the Customer shall immediately provide Frog with a written notice of the updated number; and
 - 4.2 Frog shall be entitled to increase the Fees to reflect the increase in the number of Users.
5. The Customer shall ensure that all End Users and other parties who have access to or use the Software and/or Services comply with the terms of the Agreement and any breach of the Agreement by such a party will constitute a breach of the Agreement by the Customer.
6. Installed Software

In respect of Software to be installed on Customer's own hosting equipment:

 - 6.1 the Customer shall use the Software only on its own equipment. If the Equipment becomes inoperable, the Customer shall be subject to payment for installing the Software on the replacement equipment, be entitled to use the Software on any other equipment purchased by the Customer to replace the Equipment; and
 - 6.2 the Customer may only make one copy of the Software for back-up purposes only and shall not use such copy for any other purpose(s) and/or provide copies of the Software to End Users or any third party. For the avoidance of doubt, providing an alternative platform or testing do not constitute back-up purposes for the purpose of this paragraph 6.2.
7. Hosted Software

The Software will be hosted by Frog, the Customer will:

 - 7.1 ensure that each End User shall keep a secure password for his use of the Hosting Services and On-Line Documentation and that each End User shall keep his/her password confidential; and
 - 7.2 only issue passwords which give administrative access to the Software and Hosting Services to appropriate End Users.

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