

## Frog Terms and Conditions of Business

In these terms and conditions, the following expressions have the following meanings:

**"Agreement"** means the agreement formed pursuant to clause 1 for the supply of the Software, Equipment and Services (as applicable) incorporating these terms and conditions;

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

**"Confidential Information"** 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, Equipment and/or Services from Frog;

**"Customer Data"** means the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are supplied to Frog by the Customer and/or any End User in connection with the Hosting Services.

**"Data Controller"** has the meaning given to the term in the Data Protection Act 1998;

**"Data Processor"** has the meaning given to the term in the Data Protection Act 1998;

**"Data Protection Laws"** means all privacy laws applicable to the Personal Data which is processed under or in connection with this Agreement, including the Data Protection Act 1998, EU Directive 95/46/EC and 2002/58/EC and all regulations made pursuant to and in relation to such legislation together with all codes of practice and other guidance on the foregoing issued by the Information Commissioner, all as amended or replaced from time to time.

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

**"Equipment"** means the equipment (if any) set out in the Order Form and any replacement equipment provided by Frog to the Customer from time to time;

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

**"Fees"** means the Software licence fees, Service fees and Equipment fees set out in the Order Form as amended from time to time in accordance with this Agreement;

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

**"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);

**"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 order form which sets out the Software, Equipment and 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 Equipment 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, Equipment and Services;

**"Recommended System Requirements"** means the system requirements set out by Frog as may be amended upon Frog providing written notice to the Customer from time to time;

**"Services"** means the services, including without limitation the Hosting Services, which Frog agrees in writing to provide to the Customer;

**"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;

**"Support Hours"** means the hours between 8:00am and 6:00pm on a Working Day;

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

**"Warranty Period"** means the period of 90 days from the date of delivery of the relevant Equipment and/or 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).

### 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 (subject to clause

11.1) all previous oral or written representations.

1.2 An order for the Software, Equipment and/or Services must be submitted by the Customer on Frog's standard order form 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 the Third Party Software on the Third Party Software licensors' then-current standard terms;

2.1.3 install the Software on the Equipment or Customer's equipment;

2.1.4 deliver the Software and/or Equipment to the Customer; and

2.1.5 provide the Services.

2.2 Time shall not be of the essence for any of Frog's obligations under the Agreement.

2.3 Third Party Software may be governed by additional terms and conditions which are available from Frog on request. The Customer agrees to comply with all terms and conditions relating to Third Party Software.

### 3. DELIVERY

3.1 Frog will deliver the Equipment and Software (as applicable) as agreed by the parties in writing.

3.2 In the event that the Customer purchases Equipment from Frog (as specified in the Order Form), risk in such Equipment (including, without limitation, responsibility for insuring such Equipment) shall pass to the Customer upon delivery to the Customer and ownership of such Equipment shall pass to the Customer when payment in full of the Fees relating to the Equipment is received by Frog.

3.3 In the event that Frog supplies Equipment for use by the Customer as part of a managed service or in any other circumstances except as set out at clause 3.2, the Equipment shall at all times remain the property of Frog and the Customer will have no right, title or interest in or to the Equipment (save the right to possession and use of such Equipment subject to the terms and conditions of this Agreement). Risk in Equipment shall pass to the Customer upon delivery and shall remain at the sole risk of the Customer during the term of this Agreement and any further period until such time as the Equipment is redelivered to Frog.

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### 4. SERVICES

4.1 Subject to payment of the Fees relating to the Services, Frog will use its reasonable endeavours to perform the Services in accordance with reasonable care and skill.

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

### 5. CUSTOMER OBLIGATIONS

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

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

5.1.2 promptly following the reasonable recommendations of Frog;

5.1.3 promptly providing Frog with reasonable access to the Customer premises to perform the Services which may include access out of the Customer's normal working hours;

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

5.1.5 promptly and at its expense providing suitable remote Internet access to the Software to allow Frog to perform any maintenance Services;

5.1.6 ensuring that all the Customer's systems shall meet the Recommended System Requirements;

5.1.7 granting Frog with all necessary rights to access the premises, facilities hardware, software and other items owned by or under the control of the Customer (including, without limitation, access to and use of its computers and telephone lines) which Frog needs to access to perform its obligation under this Agreement;

5.1.8 complying with the On-Line Documentation;

5.1.9 complying with the terms of the Licence and any terms relating to Third Party Software.

5.2 Any delay caused by the Customer's failure or delay in performing its obligations under this Agreement shall be the Customer's responsibility and Frog shall be entitled to charge its then-current standard rates for any wasted time or increased effort on its part that result from the Customer's failure to fully discharge its obligations promptly or at all, together with any additional costs it incurs.

5.3 Unless otherwise agreed, Frog will be responsible for obtaining appropriate licences for the Third Party Software. The Customer will be responsible for obtaining appropriate licences and consents for any content and software which is not supplied by Frog.

### 6. INTELLECTUAL PROPERTY RIGHTS

As between Frog, the Customer and/or any End User(s), all Intellectual Property Rights in the Frog Software, Third Party 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.

### 7. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

7.1 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.

7.2 The indemnity set out in clause 7.1 is subject to:

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

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

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

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

7.3 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 will at its option and expense have the right to:

7.3.1 negotiate a licence for the Customer for the continued use of the Frog Software in accordance with the Agreement;

7.3.2 modify the Customer's copy or copies of the Frog Software so as to perform in accordance with the current On-Line Documentation and 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

7.3.3 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 which for the avoidance of doubt excludes any Fees relating to the Equipment and the Services.

7.4 Frog's obligations under this clause 7 shall not apply in the event that the claim or legal action results from:

7.4.1 use of an earlier release of the Software than Frog's current release or the Customer's failure to use updates and patches supplied by Frog;

7.4.2 use of the Software in combination with any other hardware, software except for the Equipment;

7.4.3 use of the Software other than in accordance with the Agreement; or

7.4.4 the Customer's failure to procure rights which it ought to have procured for Frog or itself under this Agreement.

### 8. WARRANTY

8.1 Subject to clause 8.3, the parties acknowledge and agree that the Software, Equipment and 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 and Frog expressly excludes any and all warranties and conditions, to the maximum extent permitted by law.

8.2 Without prejudice to the generality of clause 8.1 Frog does not:

8.2.1 represent or warrant that the Software, Equipment or Services are free of viruses, inaccuracies, errors, bugs, or interruptions, or are reliable, accurate, complete, or otherwise valid;

8.2.2 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 Software will be uninterrupted or error free;

8.2.3 provide any warranty in respect of the Equipment and Third Party Software but will transfer to the Customer the benefit of any warranties which (a) Frog receives in respect of the Equipment and Third Party Software; and (b) which are capable of transfer to the Customer without further charge or formality.

8.3 Subject to clause 8.2, Frog warrants that during the Warranty Period, the Frog Software will be of satisfactory quality and be free from material defects in design, materials or workmanship.

8.4 If, at any time during the Warranty Period, the Customer becomes aware of a breach of the warranty at clause 8.3, 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 8.4 and subject to clause 11.1, Frog's only liability for breach of the warranty at clause 8.3 will be to repair or replace the relevant Frog Software.

8.5 The Customer's only remedy for breach of the obligation at clause 8.4 will be in damages.

8.6 Subject to clause 11.1, Frog will not have any liability (whether in contract, tort, misrepresentation, restitution, under statute or otherwise) for a breach of the warranty at clause 8.3 if:

8.6.1 the Customer does not comply with clause 8.4 in respect of the breach;

8.6.2 the relevant defect was caused by fair wear and tear; or

8.6.3 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 the manufacturer.

### 9. PRICING

9.1 Frog shall invoice the Customer for the Fees. Invoices for all sums due under

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- this Agreement shall (unless otherwise stated) be due for payment within 30 days from the date of invoice. For the avoidance of doubt, all Fees will be invoiced and paid in advance.
- 9.2 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.
- 9.3 In addition to the Fees, Frog shall be entitled to charge and invoice on a monthly basis:
- 9.3.1 its reasonable travel costs, carriage costs and expenses incurred in the proper performance of this Agreement provided that the Customer approves such amounts (such approval not to be unreasonably delayed or withheld); and
- 9.3.2 its actual costs incurred to search engine providers or other third parties in respect of internet searches requested by the Customer and/or End Users.
- 9.4 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 Software, Equipment and Services, (as applicable) as specified in the variation notice on or after the date from which the variation is effective (whether ordered before, on or after that date).
- 9.5 If, at any time whilst using the Hosting Services, the Customer exceeds the amount of disk storage space specified in the Proposal, Frog reserves the right to charge the Customer, and the Customer shall pay, Frog's then-current excess data storage fees.
- 9.6 In the event that payment of any sum due to Frog from the Customer is delayed beyond 7 days from the date 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.
- 9.7 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 within 7 days of the date of invoice. The disputed invoice will be dealt with in accordance with clause 14.
- 9.8 In the event that the Customer fails to pay any sum due to Frog on or before its due date for payment, Frog may suspend performance of its obligations under this Agreement by giving the Customer not less than seven days' notice including, without limitation:
- 9.8.1 withholding further deliveries of Equipment and/or Services;
- 9.8.2 disabling the Customer's access to the Software; and
- 9.8.3 suspend provision of the Services, until a reasonable time after payment is received by Frog.
- 9.9 Subject to deductions made in accordance with clause 9.7, 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.
10. **TERM AND TERMINATION**
- 10.1 Subject to earlier termination in accordance with one of the other provisions of this clause 10 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 and will continue until the day immediately preceding the third anniversary of the Commencement Date (the "**Initial Term**"). The term of the agreement shall automatically extend for a period of 12 months ("**Renewal Term**") at the end of the Initial Term and at the end of each Renewal Term and, without prejudice to clause 9.4, the Fees payable in respect of such Renewal Period will be Frog's then-current standard rates, unless either party gives written notice to the other party, not later than 60 days before the end of the Initial Term or the relevant Renewal Term, to terminate this agreement at the end of the Initial Term or the relevant Renewal Term, as the case may be.
- 10.2 In the event that this Agreement expires or is terminated for any reason, the Customer will not be entitled to any refund of any Fees or rates paid to Frog.
- 10.3 This Agreement may be terminated immediately by Frog giving not less than seven days' written notice to the other if the Customer suffers an Insolvency Event.
- 10.4 Frog may terminate this Agreement immediately if:
- 10.4.1 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; or
- 10.4.2 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.
- 10.5 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.
- 10.6 Any termination of this Agreement under this clause 10 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.
- 10.7 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.
11. **LIMITATION OF LIABILITY**
- 11.1 Notwithstanding anything to the contrary in this Agreement, Frog's liability to the Customer:
- 11.1.1 for death or personal injury caused by the negligence of Frog, its employees, agents or sub-contractors; and
- 11.1.2 for damage suffered by the Customer a result of any breach by Frog of the condition as to title or the warranty as to quiet possession implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; and
- 11.1.3 for fraud or fraudulent misrepresentation,
- is not limited (but nothing in this clause 11 confers any right or remedy upon the Customer to which it would not otherwise be entitled).
- 11.2 This clause 11 sets out Frog's entire liability (including any liability for the acts and omissions of its employees, agents or sub-contractors) to the Customer in respect of:
- 11.2.1 any breach of its contractual obligations arising under or in connection with this Agreement;
- 11.2.2 any representation, statement, negligence, breach of statutory duty or other tortious act or omission arising under or in connection with this Agreement; and
- 11.2.3 any damage to property.
- 11.3 Without prejudice to clause 8.1, Frog is not responsible for any problems of any nature arising from the use of the Software for purposes for which it was not designed (the purposes for which it was designed being those apparent from the On-Line Documentation and Product Description).
- 11.4 Frog's total liability under or in connection with this Agreement in respect of a Year will not in aggregate exceed an amount equal to the Fees and all other amounts due under this Agreement in that Year.
- 11.5 Frog will not be liable to the Customer for any damage to, loss of or costs in respect of:
- 11.5.1 anticipated profits, revenues, anticipated savings, goodwill or business opportunities (in each case, whether direct or indirect or suffered by End Users);
- 11.5.2 its employees' or consultants' time in relation to the Services (in each case, whether direct or indirect or suffered by End Users); or
- 11.5.3 any consequential losses, indirect losses, special losses or losses suffered by End Users,
- and in each case whether or not the Customer has been advised of the likelihood of such damage, loss or costs.
- 11.6 Frog will 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

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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.

- 11.7 This clause 11 will have continuing effect after termination of this Agreement, for whatever reason.

### 12. CONFIDENTIALITY

- 12.1 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.

- 12.2 The obligations of confidentiality in this clause 12 shall not extend to any matter which the receiving party can show:

- 12.2.1 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;

- 12.2.2 was independently disclosed to it by a third party entitled to disclose the same; or

- 12.2.3 is required to be disclosed under any applicable law or by order of a governmental body or authority of competent jurisdiction.

- 12.3 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.

- 12.4 The restrictions contained in this clause 12 shall continue to apply after termination of this Agreement without limit in time.

### 13. 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 consent to such use (such consent not to be unreasonably withheld or delayed).

### 14. DISPUTE MANAGEMENT

If any dispute arises out of or in connection with this Agreement, either party may (but is not obliged to) on notice to the other refer the dispute for resolution in accordance with this clause 14. 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. 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. If any dispute is not resolved within 30 days 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.

### 15. CUSTOMER DATA

- 15.1 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.

- 15.2 In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for Frog to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by (i) Frog to the extent that such Customer Data is held by Frog through the provision of Hosting Services; and/or (ii) the Customer in all other circumstances. Frog shall not be required to restore more than one previous full iteration of the Software and/or data containing the relevant lost or damaged Customer Data and shall not be required to restore one or more individual lost or damaged files. Frog shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by Frog to perform services related to Customer Data maintenance and back-up).

- 15.3 In clauses 15.4 to 15.6, the terms "Data", "Personal Data", "Process(ing)", "Data Controller" and "Data Processor" shall have the same meaning as in the Data Protection Act 1998 and any modification or re-enactment thereof and "Frog Purposes" means any of Frog's own Processing purposes (including commercial purposes) as agreed with the Customer.

- 15.4 The parties acknowledge that Frog may have access to Personal Data in respect of which the Customer is the Data Controller and Frog is the Data Processor when carrying out its obligations under this Agreement and in relation to Frog Purposes.

- 15.5 The Customer warrants that:

- 15.5.1 it has (and, in relation to Frog Purposes, it has or shall obtain (as applicable) using such terms or wording as Frog requires from time to time) all necessary consents and authorisations (including from End Users) and it shall comply with all Data Protection Laws to enable Frog to lawfully Process Personal Data for the purposes of Frog carrying out its obligations under this Agreement and as otherwise agreed in writing by the parties (including in relation to Frog Purposes); and

- 15.5.2 it will not cause Frog to be in breach of any Data Protection Laws whether by reason of any act or omission by the Customer or any of its directors, governors, officers, employees or subcontractors.

- 15.6 Without prejudice to the generality of clause 15.5, the parties agree that as requested by Frog, the Customer shall use all reasonable endeavours to facilitate the anonymisation of Personal Data (including by permitting Frog to act as its Data Processor in

relation thereto) and Frog shall be entitled to aggregate, use and share with third parties any such anonymised Data for any purpose whether or not in relation to this Agreement.

### 16. GENERAL

- 16.1 Any notices shall, unless otherwise expressly stated, be in writing and shall be given by sending the same by e-mail, first class post or facsimile transmission to the other party's address as may be designated in writing from time to time. 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 or facsimile transmission shall be deemed to have been delivered on the next working day following transmission.

- 16.2 The Customer may not assign, novate, transfer or subcontract any rights or obligations under this Agreement without Frog's prior written consent. Frog shall have the right to assign, novate, transfer or subcontract all or any of its rights and obligations to any third party on written notice to the Customer including appointing agents to invoice and receive payment from the Customer under this Agreement.

- 16.3 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.

- 16.4 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.

- 16.5 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.

- 16.6 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.

- 16.7 Nothing in clauses 16.5 or 16.6 will be interpreted or construed as limiting or excluding the liability of any person for fraud or fraudulent misrepresentation.

- 16.8 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.

- 16.9 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.

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- 16.10 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.
- 16.11 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 - LICENCE

1. Subject to the Customer paying the Fees relating to the Frog Software, Frog grants to the Customer a non-transferable, non-exclusive licence to use the Frog Software in accordance with the On-Line Documentation solely for the Customer's internal 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 pupils listed on the Customer's official roll, the Customer's employees and, so far as reasonable possible, any other End Users; and
- 3.6 permit Frog to audit the Customer's use of the Software and Hosting Services. If any of the audits referred to in this paragraph 3.5 reveal that any password has been provided to any individual who is not an End User or any End User has failed to act in accordance with this Agreement, then without prejudice to Frog's other rights, (i) Frog may disable such passwords and shall not issue any new passwords to any such individual; and (ii) the Customer must not issue any new passwords to any such individual.
4. The Customer will be entitled to allow End Users to access the facilities offered to End Users by the Software as specified in the On-Line Documentation provided that the number of pupils on the Customer's official roll does not increase by more than 10% above the number of pupils declared to be on the Customer's official roll as set out in the Order Form ("**Pupil Roll Number**"). In the event that the number of pupils on the Customer's official roll increases by more than 10% above the Pupil Roll Number:
  - 4.1 the Customer shall immediately provide Frog with a written notice of the updated number of pupils on the Customer's official roll; and
  - 4.2 Frog will be entitled to increase the Fees to reflect the increase in the number of pupils on the Customer's official roll.
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 Equipment and/or the Customer's equipment:

  - 6.1 the Customer shall use the Software only on the Equipment or equipment approved in advance by Frog in writing. If the Equipment becomes inoperable, the Customer shall 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, provided that such replacement equipment has been approved in advance by Frog in writing; 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**

If 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 password confidential; and
  - 7.2 only issue passwords which give administrative access to the Software and Hosting Services to appropriate End Users.