

Terms of Service

We are Equin Limited (the "Supplier"), a company registered in England and Wales with company number 06347232, whose registered office is at Unit G, Pattern Shop, Trevoarn, Hayle, Cornwall, England, TR27 4EZ.

Background:

- A. The Supplier has developed certain software applications which it makes available to subscribers via the internet on an annual subscription basis, for the purpose of tracking pupil assessments and monitoring progress and academic development.
- B. The Customer wishes to use the site at insighttracking.com and any related websites, mobile sites or applications, our services (where applicable), Documentation and any software provided thereunder in its education operations.
- C. The Supplier has agreed to provide, and the Customer has agreed to purchase and have made available to it, the Supplier's service subject to the terms and conditions on this page, together with the documents referred to within it (the "Agreement").

Operative Provisions:

1. Interpretation

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

"Active Pupils"	those pupils currently enrolled at the Customer's school/schools or Academy/Academies; with the Customer.
"Applicable Laws"	means: <ol style="list-style-type: none">To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom.To the extent EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject.
"Applicable Data Protection Laws"	means: <ol style="list-style-type: none">To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject, which relates to the protection of personal data.
"Authorised Users"	those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation, as further described in clause 3.2.3 and Schedule 2 .
"Business Day"	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 OR the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and controls, controlled and the expression change of control shall be construed accordingly.
"Confidential Information"	information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 12.6 or clause 12.7 .
"Customer"	the School, Academy, Multi Academy Trust or other legal entity who purchases Services from the Supplier.
"Customer Data"	the data inputted or supplied by the Customer, Authorised Users, or which the Supplier processes in connection with this agreement, in the capacity of a processor on behalf of the Customer, for the purpose of using the Services or facilitating the Customer's use of the Services, including but not limited to the personal data (as defined in Data Protection Legislation) of pupils and staff of the Customer.
"Documentation"	the documents made available to the Customer by the Supplier online via insighttracking.com or such other web address notified by the Supplier to the Customer from time to time which sets out a description of the Services and the user instructions for the Services.
"Effective Date"	the date of this Agreement.
"EU GDPR"	the General Data Protection Regulation ((EU) 2016/679).
"ICO"	the Information Commissioner's Office.
"Money Back Guarantee"	the Supplier's money back guarantee as described in clause 10 .
"Normal Business Hours"	9.00 am to 4.30 pm local UK time, each Business Day.
"Purpose"	the purposes for which the Customer Personal Data is processed, as set out in clause 5.7(a) .
"Services"	the subscription services provided by the Supplier to the Customer under this Agreement via insighttracking.com or any other website notified to the Customer by the Supplier from time to time, as more particularly described in the Documentation.
"Specialist"	a person qualified to act as an expert in relation to disputes arising under clause 13.6 having not less than five years'

	professional experience in the area to which the dispute relates.
"Software"	the online software applications, currently known as Insight, provided by the Supplier as part of the Services.
"Subscription Fees"	the subscription fees payable by the Customer to the Supplier for the Subscriptions, as set out in paragraph 1 of Schedule 1 .
"Subscription Period"	the 12 month period, described in clause 15.1 , of this Agreement from the last day of the Free Trial Period, or the preceding Subscription Period.
"Subscription Term"	has the meaning given in clause 15.2 (being the first Subscription Period together with any subsequent Subscription Periods).
"Support Services Policy"	the Supplier's policy for providing support in relation to the Services as made available at www.insighttracking.com/support or such other website address as may be notified to the Customer from time to time.
"Subscriptions"	the subscriptions purchased by the Customer pursuant to clause 9.1 which entitle Authorised Users to access and use the Services and the Documentation in accordance with this Agreement.
"Free Trial Period"	the 60-day evaluation period during which the Customer will trial the use of the Services in accordance with this Agreement.
"UK GDPR"	has the meaning given to it in the Data Protection Act 2018.
"Virus"	any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality).

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

1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement.

1.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.

1.9 A reference to writing or written includes email but not faxes.

1.10 References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement.

2. Free Trial Period

2.1 The Customer may elect to commence a 60-day Free Trial Period from the Effective Date. The Customer will notify the Supplier of its election to commence the Free Trial Period by completing the form made available at www.insighttracking.com/free-trial.

2.2 Before the end of the Free Trial Period, the Supplier will contact the Customer to enquire whether the Customer would like to continue to use the Services and Documentation beyond the Free Trial Period.

2.3 If the Customer elects to continue using the Services and Documentation beyond the Free Trial Period, the Customer will become liable to pay the Subscription Fees as detailed in clause [9](#) and [Schedule 1](#).

2.4 The Customer has until 30 days following the Free Trial Period to elect to continue using the Services and Documentation. If the Customer does not elect to continue using the Services and Documentation, this Agreement will terminate 30 days following the Free Trial Period in accordance with clause [15.5](#).

2.5 The Supplier may immediately terminate the Agreement for any reason during the Free Trial Period.

3. Subscriptions

3.1 Subject to the Customer purchasing the Subscriptions in accordance with clause [9.1](#), the restrictions set out in this clause [3](#) and the other terms and conditions of this Agreement, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sub-licences, to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's internal business operations.

3.2 In relation to the Authorised Users, the Customer undertakes that:

3.2.1 it will not allow or suffer any Software account to be used by more than one individual Authorised User unless it has been reassigned in its

entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation;

3.2.2 each Authorised User shall keep a secure password for their use of the Services and Documentation and that each Authorised User shall keep their password confidential;

3.2.3 it shall maintain a written, up to date list of current Authorised Users (including their Authorised User Category as detailed at [Schedule 2](#)) and provide such list to the Supplier within 5 Business Days of the Supplier's written request at any time or times;

3.2.4 it shall permit the Supplier to audit the Services in order to establish the name of each Authorised User. Such audit may be conducted no more than once per quarter, at the Supplier's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business; and

3.2.5 if any of the audits referred to in clause [3.2.4](#) reveal that any Software access has been provided to any individual who is not an Authorised User, then without prejudice to the Supplier's other rights, the Customer shall promptly disable such access and the Supplier shall not issue any new access to any such individual.

3.3 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

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

3.3.2 facilitates illegal activity;

3.3.3 depicts sexually explicit images;

3.3.4 promotes unlawful violence;

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

3.3.6 is otherwise illegal or causes damage or injury to any person or property;

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

3.4 The Customer shall not:

3.4.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement:

a. attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute

all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
b. attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or

3.4.2 access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or

3.4.3 use the Services and/or Documentation to provide services to third parties; or

3.4.4 subject to clause [23.1](#), license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or

3.4.5 attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause [3](#); and

3.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier. The Supplier shall not be liable for any such unauthorised access, including but not limited to:

3.5.1 access by employees who are no longer Authorised Users, or

3.5.2 previous employees who no longer have the Customer's permission to access or use the Services and/or Documentation.

3.6 The rights provided under this clause [3](#) are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

4 Services

4.1 The Supplier shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this Agreement.

4.2 The Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:

4.2.1 planned maintenance carried out during the maintenance window of 10.00 pm to 2.00 am UK time; and

4.2.2 unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance.

4.3 The Supplier will, as part of the Services and at no additional cost to the Customer, provide the Customer with the Supplier's standard customer support services during Normal Business Hours in accordance with the Supplier's Support

Services Policy in effect at the time that the Services are provided. The Supplier may amend the Support Services Policy in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at the Supplier's then current rates.

5 Data Protection

5.1 For the purposes of this clause [5](#), the terms **controller**, **processor**, **data subject**, **personal data**, **personal data breach** and **processing** shall have the meaning given to them in the UK GDPR.

5.2 Both parties will comply with all applicable requirements of Applicable Data Protection Laws. This clause [5](#) is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.

5.3 The parties acknowledge that for the purposes of the Applicable Data Protection Laws, the Customer is the controller and the Supplier is the processor. [Schedule 3](#) sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data (as defined by Applicable Data Protection Laws) and categories of data subject (as defined by Applicable Data Protection Laws).

5.4 The Customer shall retain all rights, title and interest in and to all Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

5.5 By entering into this agreement, the Customer consents to (and shall procure all required consents, from its personnel, representatives and agents, in respect of) all actions taken by the Supplier in connection with the processing of Customer Personal Data, provided these are in compliance with the then-current version of the Supplier's privacy notice available at www.insighttracking.com/privacy (**Privacy Notice**) or such other website address as may be notified to the Customer from time to time. In the event of any inconsistency or conflict between the terms of the Privacy Notice and this agreement, the Privacy Notice will take precedence.

5.6 Without prejudice to the generality of clause [5.2](#), the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Customer Personal Data to the Supplier for the duration and purposes of this agreement.

5.7 Without prejudice to the generality of clause [5.2](#) the Supplier shall, in relation to Customer Personal Data:

- a. process that Customer Personal Data only as agreed between the parties, unless the Supplier is required by Applicable Laws to otherwise process that Customer Personal Data. Where the Supplier is relying on Applicable Laws as the basis for processing Customer Processor Data, the Supplier shall notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Provider from so notifying the Customer on important grounds of public interest. The Supplier shall inform the Customer if, in the opinion of the Supplier, the instructions of the Customer infringe Applicable Data Protection Legislation;
- b. implement appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal

Data, which are 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 and which measures may include, where appropriate, pseudonymising and encrypting Customer Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Customer Data can be restored in a timely manner in the event of any incident, and by the Supplier regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it;

- c. ensure that any personnel engaged and authorised by the Supplier to process Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
- d. assist the Customer insofar as this is possible (taking into account the nature of the processing and the information available to the Supplier), and at the Customer's cost and written request, in responding to any request from a data subject and in ensuring the Customer's compliance with its obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- e. notify the Customer without undue delay on becoming aware of a personal data breach involving the Customer Personal Data;
- f. at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination of the agreement unless the Supplier is required by Applicable Law to continue to process that Customer Personal Data. For the purposes of this clause 5.7(f) Customer Personal Data shall be considered deleted where it is put beyond further use by the Supplier; and
- g. maintain records to demonstrate its compliance with this clause [5](#) and allow for reasonable audits by the Customer or the Customer's designated auditor, for this purpose, on reasonable written notice.

5.8 The Customer hereby provides its prior, general authorisation for the Supplier to:

- a. appoint processors to process the Customer Personal Data, including those processors listed in [Schedule 3](#), provided that the Supplier:
- b.
 - i. shall ensure that the terms on which it appoints such processors comply with Applicable Data Protection Laws, and are consistent with the obligations imposed on the Supplier in this clause [5](#);
 - ii. shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of the Supplier.
- c. transfer Customer Personal Data outside of the UK as required for the Purpose, provided that the Supplier shall ensure that all such transfers are effected in accordance with Applicable Data Protection Laws. For these purposes, the Customer shall promptly comply with any reasonable request of the Supplier, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the Commissioner from time to time (where the UK GDPR applies to the transfer).

5.9 The Supplier shall follow its archiving procedures for Customer Data as set out in its Back-Up Policy available at [Schedule 4](#), as such document may be amended by the Supplier in its sole discretion from time to time. In the event of any loss or

damage to Customer Data, the Customer's sole and exclusive remedy shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier in accordance with the archiving procedure described in its Back-Up Policy. The Supplier 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 the Supplier to perform services related to Customer Data maintenance and back-up).

5.10 Either party may, at any time on not less than 30 days' notice, revise this clause [5](#) by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

6 Third Party Providers

The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. The Supplier makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not the Supplier. The Supplier recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

7 Supplier's Obligations

7.1 The Supplier undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.

7.2 The undertaking at clause [7.1](#) shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents.

7.3 If the Services do not conform with the undertaking at clause [7.1](#), the Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause [7.1](#). Notwithstanding the foregoing, the Supplier:

7.3.1 does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and

7.3.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to

limitations, delays and other problems inherent in the use of such communications facilities.

7.4 This Agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.

7.5 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.

8 Customer's Obligations

The Customer shall:

8.1 provide the Supplier with:

- a. all necessary co-operation in relation to this Agreement; and
- b. all necessary access to such information as may be required by the Supplier

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

8.2 comply with all applicable laws and regulations with respect to its activities under this Agreement;

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

8.4 ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;

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

8.6 ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and

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

8.8 ensure that any Customer Data sent to the Supplier to be processed on its behalf is sent securely, following the Supplier's instructions communicated to the Customer via the Supplier's platform or by email or telephone.

9 Charges and Payment

9.1 The Customer shall pay the Subscription Fees to the Supplier for the Subscriptions in accordance with this clause [9](#) and [Schedule 1](#).

9.2 The Supplier shall invoice the Customer:

9.2.1 for the Subscription Fees payable within 14 days of the Customer notifying the Supplier that the Customer wishes to continue using the Services beyond the Free Trial Period; and

9.2.2 for the Subscription Fees payable in respect of each subsequent Subscription Period within 14 days of its commencement.

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

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

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

9.3.2 interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then-current base lending rate of the Supplier's bankers in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

9.4 All amounts and fees stated or referred to in this Agreement:

9.4.1 shall be payable in pounds sterling;

9.4.2 are, subject to clause [14.3.2](#) and clause [10](#), non-cancellable and non-refundable;

9.4.3 are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.

9.5 The Supplier shall be entitled to increase the Subscription Fees and/or the support fees payable pursuant to clause [4.3](#) at the start of each Subscription Period upon 90 days' prior written notice to the Customer and [Schedule 1](#) shall be deemed to have been amended accordingly.

10 Money Back Guarantee

10.1 The Supplier offers the Customer a full money back guarantee on the Subscription Fees ("Money Back Guarantee"), should the Customer be unhappy with the Services provided.

10.2 The Customer may elect to invoke the Money Back Guarantee at any point during the Subscription Term and the Customer will receive a refund of the Subscription Fees paid for the Subscription Period in which the money back guarantee is invoked, within 30 days of giving notice of the invoking of the Money Back Guarantee in writing to the Supplier.

10.3 The Customer does not need to provide any reason for invoking the Money Back Guarantee, although the Supplier would welcome this feedback.

11 Proprietary Rights

11.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

11.2 The Supplier confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

12 Confidentiality

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

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

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

12.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or

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

12.2 Subject to clause [12.4](#), each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.

12.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.

12.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 12.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

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

12.6 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.

12.7 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.

12.8 No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

12.9 The above provisions of this clause [12](#) shall survive termination of this Agreement, however arising.

13 Indemnity

13.1 The Customer shall defend, indemnify and hold harmless the Supplier 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 and/or Documentation, provided that:

13.1.1 the Customer is given prompt notice of any such claim;

13.1.2 the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and

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

13.2 The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Services or Documentation infringes any United Kingdom patent effective as of the Effective 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:

13.2.1 the Supplier is given prompt notice of any such claim;

13.2.2 the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and

13.2.3 the Supplier is given sole authority to defend or settle the claim.

13.3 In the defence or settlement of any claim, the Supplier 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 this Agreement on 5 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

13.4 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

13.4.1 a modification of the Services or Documentation by anyone other than the Supplier; or

13.4.2 the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by the Supplier; or

13.4.3 the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.

13.5 The foregoing and clause [14.3.2](#) state the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

13.6 Subject to Clause [14](#) generally,

13.6.1 the Supplier indemnifies the Customer, without financial limit (but in the appropriate proportion only), in respect of any monetary penalty imposed by the ICO on the Customer which arises from the Supplier's failure to comply with its data processing obligations under clause [5](#), or Applicable Data Protection Laws, provided that the parties agree that the actions or omissions which led to that penalty being imposed are wholly or partially attributable to the Supplier.

13.6.2 If any dispute arises in relation to the Supplier's liability under clause [13.6.1](#) which cannot be resolved by the parties negotiating in good faith, a Specialist will be appointed by agreement between the parties, as appropriate having regard to the nature of the dispute or difference in question.

13.6.3 Any dispute over the type of Specialist appropriate to resolve the dispute, or the identity of the Specialist, may be referred at the request of either party to the President or next most senior available officer of the Law Society who will have the power, with the right to take such further advice as he may require, to determine the appropriate type of Specialist and to arrange his nomination under clause [13.6.2](#).

13.6.4 The Specialist is to act as an independent expert and is to have regard to all representations and evidence before it when making its decision, which is to be in writing, and which must provide reasons for the decision.

13.6.5 The responsibility for the costs of referring a dispute to a Specialist under this clause [13.6](#), including costs connected with the appointment of the Specialist, the Specialist's own costs and other professional costs of any party in relation to a dispute, will be decided by the Specialist.

13.6.6 The Specialist's decision will (save in the case of fraud or manifest error) be final and binding on the parties.

14 Limitation of Liability

14.1 Except as expressly and specifically provided in this Agreement:

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

14.1.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and

14.1.3 the Services and the Documentation are provided to the Customer on an "as is" basis.

14.2 Nothing in this Agreement excludes the liability of the Supplier:

14.2.1 for death or personal injury caused by the Supplier's negligence; or

14.2.2 for fraud or fraudulent misrepresentation.

14.3 Subject to clause [14.1](#) and clause [14.2](#):

14.3.1 the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and

14.3.2 the Supplier's total aggregate liability in contract (including in respect of the indemnity at clause [13.2](#)), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the total Subscription Fees paid for the Subscriptions during the 12 months immediately preceding the date on which the claim arose.

15 Term and Termination

15.1 If pupil records have been imported into the Software, then the Supplier's quote for the first Subscription Period ("Sign-up Quote") is provided 14 days before the end of the Free Trial Period. The Supplier's quote for subsequent Subscription Periods ("Renewal Quote") is provided 90 days before the end of the current Subscription Period.

15.2 This Agreement shall, unless otherwise terminated as provided in this clause [15](#), commence on the Effective Date and shall continue for the first Subscription Period and, thereafter, where the Customer accepts the Renewal Quote this Agreement shall be renewed for successive periods of 12 months (each a Subscription Period), unless:

15.2.1 either party notifies the other party of termination, in writing, at least 60 days before the end of the current Subscription Period, in which case this Agreement shall terminate 30 days after the expiry of the applicable Subscription Period; or

15.2.2 otherwise terminated in accordance with the provisions of this Agreement;

and the first Subscription Period together with any subsequent Subscription Periods shall constitute the Subscription Term.

15.3 If the Customer does not accept the Renewal Quote this Agreement will automatically terminate 30 days after the last day of the Subscription Period.

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

15.4.1 the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;

15.4.2 the other party commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;

15.4.3 the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;

15.4.4 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 ;

15.4.5 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;

15.4.6 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;

15.4.7 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;

15.4.8 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;

15.4.9 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;

15.4.10 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;

15.4.11 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 [15.4.4](#) to clause [15.4.10](#) (inclusive);

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

15.4.13 there is a change of control of the other party.

15.5 On termination of this Agreement for any reason:

15.5.1 all licences granted under this Agreement shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Documentation;

15.5.2 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;

15.5.3 the Supplier shall destroy or otherwise dispose of any Customer Data in its possession within 30 days following the termination of this Agreement unless the Supplier receives, no later than ten days before the effective date of the termination of this Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier 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). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data; and

15.5.4 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 agreement which existed at or before the date of termination shall not be affected or prejudiced.

15.5.5 Where the Supplier destroys or otherwise disposes of Customer Data in accordance with clause [15.5.3](#), it shall provide written notice to

the Customer confirming this within 30 days of such destruction or other disposal.

16 Force Majeure

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

17 Conflict

If there is an inconsistency between any of the provisions in the main body of this Agreement and the Schedules, the provisions in the main body of this Agreement shall prevail.

18 Variation

18.1 The Supplier may revise these Terms of Service at any time by amending this page. Where the Supplier intends to make any amendments to the Terms of Service, it shall provide written notice including details of the changes at least 30 days prior to making them.

18.2 In the event that the Customer objects to the proposed changes notified in accordance with clause [18.1](#), the Customer shall have the special right is entitled to terminate this Agreement and receive a pro-rata refund for the remaining time in the Subscription Period. For the avoidance of doubt, if the Customer Continuing continues to use avail of the Services after any such notification this constitutes agreement an affirmation to of the new terms, and your continued use will be subject to these terms.

18.3 Some of the provisions contained in these Terms of Service may also be superseded by provisions or notices published elsewhere on the site.

19 Waiver

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

20 Rights and Remedies

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

21 Severance

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

21.2 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.

22 Entire Agreement

22.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

22.2 Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

22.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

22.4 Nothing in this clause shall limit or exclude any liability for fraud.

23 Assignment

23.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

23.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

24 No Partnership or Agency

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

25 Third Party Rights

This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

26 Notices

26.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this Agreement, or such other address as may have been notified by that party for such purposes, or sent by email

to the other party's main contact email address as set out in this Agreement or as communicated to the other party by that party.

26.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to have been received 1 Business Day after being sent by the sender.

27 Governing Law

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

28 Jurisdiction

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

29 Offers

From time to time, we (or selected third parties) may include promotions, votes, competitions, or other offers via the Services. Each such offer shall be subject to its own express terms.

30 Mobile Use

Standard network charges apply to your access to the Services via mobile. You may incur additional charges from your network operator according to your contract.

Schedule 1 - Subscription Fees

1 Subscription Fees

The Subscription Fees are determined by the number of Active Pupils in the Software on the date a quote is generated and the subscription level chosen.

The Subscription Fees, effective from 1 January 2021, are calculated as follows:

Insight Essentials	
Pupils	Cost per Year
1 - 399	£3/pupil + VAT
400+	£1200 + VAT

Insight Plus	

Pupils	Cost per Year
1 - 399	£4/pupil + VAT
400+	£1600 + VAT

2 Support Fees

The Subscription Fees include support as detailed in the Support Services Policy. There are no additional Support Fees

Schedule 2 - Authorised User Categories

1 Authorised User Categories

The following Authorised User Categories and levels of access apply to this Agreement:

Authorised User Category	Access Level
Admin	Full administration access (the highest level of access for an Authorised User)
Normal	User access
Governor	Anonymised version of the Software only

2 First Authorised User

Please note that the initial Authorised User will always be an Admin level Authorised User.

3 Changing access levels

Authorised Users are not able to change their own level of access, but other Admin level Authorised Users are able to change the access levels of any other Authorised User.

Schedule 3 - Processing, Personal Data and Data Subjects

1 Categories of data subject

- Pupils;
- Customer employees; and
- Authorised Users.

2 Types of personal data and processing by the Supplier

Pupil Records

Pupil records include the following data:

- Unique Pupil Number (UPN)
- Legal first & last names
- Preferred first & last names
- Date of birth
- Gender
- Date pupil joined the school
- Date pupil left the school

The following data can optionally be recorded as well:

- Address
- Ethnicity
- EAL status
- FSM history
- SEN history
- Service child status
- In-care status
- Attendance summaries
- Customer-defined groups
- Customer-defined notes and files

Location: Supplier's EU-based database servers.

Purpose: Allows Customer to track pupil details and produce reports which filter/group using pupil attributes.

Retention: Until 30 days after this Agreement terminates, according to clause 15.2 and clause 15.5.3.

Deletion: Customer can request total pupil deletion by contacting the Insight support team.

Notes: Admin users upload pupil records from either a third-party MIS linking service, CTF, Excel document, or manual direct entry via web form. They keep records up-to-date by the same process.

3 Pupil Assessments

Data: Statutory assessments (e.g EYFSP, Phonics, SATs); Test results; Teacher judgements images and written comments supplied as evidence for assessments or as general attachments to pupils' records

Location: Supplier's EU-based database servers.

Purpose: Allow Customer to record assessments and generate reports from them.

Retention: Until 30 days after this Agreement terminates, according to clause 15.2 and clause 15.5.3.

Deletion: Schools can delete individual assessment records. Batch deletion of records can be requested by contacting Insight support.

4 Profiles for Customer employees and authorised users

Data: Forename; Surname; Email address; Password; Access-level.

Location: Supplier's EU-based database servers.

Purpose: To allow authorised users to access the Services. To allow Customer support representatives to provide assistance via email.

Retention: Until 30 days after this Agreement terminates, according to clause 15.2 and clause 15.5.3.

Deletion: School Admin-level users can delete user accounts.

5 Additional data processing

5.1 System log

The Software generates an automated log of system activity for diagnostics and performance monitoring. The log can include some personal data, including:

- UPNs
- Pupil assessments
- User email address

Location: Supplier's EU-based servers.

Retention: 90 days.

Deletion: Log entries are automatically deleted after 90 days.

6 Third party processors

Entity	Purpose	Location
Critical Infrastructure		
Amazon Web Services, Inc.	Primary infrastructure used to host Customer Data submitted to the Services.	AWS eu-west-1 (Ireland)
Microsoft Corporation	Cloud-based server infrastructure used to host Customer Data submitted to the Services.	United Kingdom
Hibernating Rhinos Ltd	Cloud-based database hosting used to store Customer Data submitted to the services.	AWS Ireland; AWS London
Wildbit, LLC	An email sending service "Postmark", used to send transactional emails from the Services.	United States
Customer Sales and Support		
Digital Ocean, Inc.	Used to host our discussion forum at https://discuss.insighttracking.com/	London
Google LLC	Used to provide email, calendar and analytics services for sales and customer support.	United States
FrontApp, Inc.	Used to provide email management services for sales and customer support.	United States
Slack	Used internally to manage team communications.	United States

Schedule 4 - Back-up Policy

1 The Supplier conducts a full Software database back-up everyday at midnight.

2 Customer Data held in back-ups is considered to be "archived" data. Archived data is stored for 365 days in a "non-live" state, with the sole purpose to protect against loss and damage of Customer Data. Deletion from back-ups is managed via "do not restore" conditions.

3 The Software database is also replicated in real time to a secondary database.