

Terms of Service

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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

1. The Supplier has developed certain software applications which it makes available to subscribers via the internet at insighttracking.com (or any other web address or mobile application notified by the Supplier to the Customer from time to time) on a subscription basis, for the purpose of tracking pupil assessments and data to monitor academic development.
2. The Customer wishes to use the Supplier's services in its education operations.
3. 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 detailed in the section entitled Agreed terms below, together with the documents referred to within it (the **Agreement**).

Agreed terms

1. Definitions and Interpretation

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

1.1. Definitions

Academy	an educational institution in England which meets the requirements of and operates under the Academies Act 2010 and which is regulated by a funding agreement with the Department for Education.
Academy Trust	a not-for-profit company that operates a single Academy.
Active Pupils	those pupils currently enrolled at the Customer's school/schools or Academy/Academies.
Applicable Laws	all applicable law, statutes, regulations from time to time in force.
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. Where the Customer is a Multi Academy Trust, Authorised Users also includes employees, agents and independent contractors of Academies nominated by the Trust to access and use the Services under this Agreement.
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.
Confidential Information	information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 11.6 or clause 11.7.

Customer	the School, Academy, Academy Trust, Multi Academy Trust or other legal entity who purchases Services from the Supplier, and, in the case of Multi Academy Trust's, the specific Academies within the Trust which it nominates to access and use the Services under this Agreement. For the purpose of this definition, where an Academy purports to purchase Services the Academy Trust or Multi Academy Trust which operates that Academy, will, as its operating legal entity, also be deemed to enter into the Agreement with the Supplier on behalf of that Academy.
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 Processing Agreement) of pupils and staff of the Customer.
Data Processing Agreement	the data processing agreement located at https://www.insighttracking.com/dpa
Documentation	the documents made available to the Customer by the Supplier online via insighttracking.com or any other web address or mobile application 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 the Customer accepts this Agreement by clicking the Accept button (or equivalent mechanism).
Free Trial Period	an evaluation period of 60 days, or such other period as may be agreed in writing between the Customer and the Supplier, during which the Customer may trial the use of the Services in accordance with this Agreement.
Multi Academy Trust	a not-for-profit organisation which operates several Academies.
Normal Business Hours	9.00 am to 4.00 pm local UK time, each Business Day.
School	an educational institution which is outside the further education or the higher education sector and is an institution for providing primary and/or secondary education whether or not the institution also provides part-time education suitable to the requirements of early years pupils or further education and whether privately operated or state owned.
Services	the subscription services provided by the Supplier to the Customer under this Agreement via insighttracking.com or any other web address or mobile application notified to the Customer by the Supplier from time to time, as more particularly described in the Documentation.
Sign-up Quote	has the meaning given in clause 2.3.
Software	the online software applications, currently known as Insight, provided by the Supplier as part of the Services.

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.
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	a period of 12 months, or such other period as may be agreed in writing between the Customer and the Supplier, beginning immediately following the last day of the Free Trial Period, or the preceding Subscription Period.
Subscription Term	has the meaning given in clause 14.1 (being the first Subscription Period together with any subsequent Subscription Periods).
Support Services	the Support Services provided by the Supplier set out in the Support Services Policy at https://www.insighttracking.com/policies
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 and a reference to one gender shall include a reference to the other genders.
- 1.6.** 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.
- 1.7.** 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.
- 1.8.** A reference to writing or written includes email but not faxes.
- 1.9.** 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.
- 1.10.** Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Free trial period

- 2.1.** The Customer may elect to commence a 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 insighttracking.com, or in writing. Where the Customer is a Multi Academy Trust, the Multi Academy Trust shall specify which Academies (if any) it nominates to access and use the Services and Documentation in addition to the Multi Academy Trust.
- 2.2.** Where the Customer is an Academy which is part of an Academy Trust or Multi Academy Trust, the Academy will ensure it has obtained the approval of the Academy Trust or Multi Academy Trust before submitting an application to the Supplier for a Free Trial Period. The Customer shall provide evidence of such approval to the Supplier upon request.
- 2.3.** 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. If Active Pupil records have been imported into the Software, the Supplier shall provide the Customer with a quote for the Subscription Fees that will be payable for the first Subscription Period (**Sign-up Quote**) at least 14 days before the end of the Free Trial Period.
- 2.4.** If the Customer accepts the Sign-up Quote the Customer will become liable to pay the Subscription Fees as detailed in clause 9 and Schedule 1. Where the Customer is an Academy which is part of an Academy Trust or Multi Academy Trust, the Academy Trust or Multi Academy Trust will be deemed to have entered into the Agreement with the Supplier but the Academy may pay the Subscription Fees.
- 2.5.** If the Customer does not accept the Sign-up Quote, this Agreement will automatically terminate 30 days following the end of the Free Trial Period and the provisions of clause 14.3 will apply.
- 2.6.** Either party 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.** each Authorised User shall create an individual account in order to access and use the Services and the Customer will not allow or suffer any 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 and provide such list to the Supplier within five Business Days of the Supplier's written request at any time;
 - 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 and shall ensure that no Authorised User shall 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;
- 3.3.6.** infringes a third party's intellectual property rights; or
- 3.3.7.** 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 and/or any Authorised User's access to any material that breaches the provisions of this clause.

3.4. The Customer shall not and shall ensure that no Authorised User shall:

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 (other than those services that would be provided to third parties in the ordinary course of Customer operations); or

3.4.4. subject to clause 21, 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.

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:

3.6.1. any subsidiary or holding company (subsidiary or holding company having the meaning given in section 1159 of the Companies Act 2006) of the Customer; or

3.6.2. where the Customer is a Multi Academy Trust, any Academies that are not nominated by the Multi-Academy Trust to access and use the Services as Authorised Users under this Agreement. Such access and use by any Academies within a Multi Academy Trust is subject always to the Academy being set up by the Supplier to receive the Services and the Multi Academy Trust (or, where applicable, the Academy) paying the Subscription Fees being paid for the number of Active Pupils for those Academies.

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 8.00 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 six 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 Support Services Policy in effect at the time that the Services are provided.

4.4. The Supplier may amend the standard Support Services in its sole and absolute discretion from time to time, by giving the Customer prior written notice. The Customer may purchase enhanced support services separately at the Supplier's then current rates.

5. Data protection

The parties shall comply with their data protection obligations under Applicable Laws, as more specifically detailed in the Data Processing 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 warrants that the Services will be performed substantially in accordance with the specification in the Documentation and that the Services will be provided using reasonable skill and care.

- 7.2.** The warranty at clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Services being 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 warranty at clause 7.1, the Supplier will, at its expense, use reasonable commercial endeavours to correct any such non-conformance promptly, or where possible 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 warranty 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 or any mobile network, 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

- 8.1.** The Customer shall:
 - 8.1.1.** ensure that the appropriate legal entity enters into the Agreement. Where the Customer is an Academy, the Academy Trust or, as applicable, the Multi Academy Trust which operates that Academy, will, as its operating legal entity, also be deemed to enter into the Agreement with the Supplier on behalf of the Academy;
 - 8.1.2.** co-operate with the Supplier in all matters relating to the Services;
 - 8.1.3.** provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services in a timely manner, and ensure that such information is complete and accurate in all material respect;
 - 8.1.4.** comply with all Applicable Laws with respect to its activities under this Agreement;
 - 8.1.5.** 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;
 - 8.1.6.** 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;
 - 8.1.7.** ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time;
 - 8.1.8.** 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; and

8.1.9. 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.

8.2. If the Supplier's performance of any of its obligations under this Agreement is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

8.2.1. without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

8.2.2. the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Customer's failure or delay to perform any of its obligations as set out in this clause 8; and

8.2.3. the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

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, suspend 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 Schedule 1, non-cancellable and non-refundable; and

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 4.4 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.
- 9.6. Where the Customer is a Multi Academy Trust and wishes to nominate new Academies to access the Services, the Customer shall notify the Supplier in writing. The Supplier shall adjust the Subscription Fee to reflect the number of Active Pupils added in accordance with paragraph 1.1 of Schedule 1. Where an Academy within a Multi Academy Trust starts using the Services and the Trust already has an account, billing shall be pro-rated to align billing dates.

10. Proprietary rights

- 10.1. 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.
- 10.2. 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.
- 10.3. The Supplier may generate and use anonymised and aggregated statistical data derived from use of the Services for analytics, benchmarking, research, reporting, service improvement and product development purposes, provided that such data cannot reasonably be used to identify the Customer, any Authorised User, or any individual.

11. Confidentiality

- 11.1. 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:
 - 11.1.1. is or becomes publicly known other than through any act or omission of the receiving party;
 - 11.1.2. was in the other party's lawful possession before the disclosure;
 - 11.1.3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
or
 - 11.1.4. is independently developed by the receiving party, which independent development can be shown by written evidence.
- 11.2. Subject to clause 11.4, 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.
- 11.3. 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.
- 11.4. 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 11.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 11.5. The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.

- 11.6.** The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.
- 11.7.** Save as otherwise set out in this Agreement, 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 any relevant securities exchange), any court or other authority of competent jurisdiction. The Supplier may also name the Customer in tender responses, testimonials, case studies, website client listings, and other marketing materials (provided no Confidential Information is disclosed).
- 11.8.** The above provisions of this clause 11 shall survive termination of this Agreement, however arising.

12. Indemnity

- 12.1.** 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:
 - 12.1.1.** the Customer is given prompt notice of any such claim;
 - 12.1.2.** the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
 - 12.1.3.** the Customer is given sole authority to defend or settle the claim.
- 12.2.** The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Services or Documentation infringes any patent, copyright, trade mark, database right, right of confidentiality or other intellectual property right arising within the United Kingdom, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
 - 12.2.1.** the Supplier is given prompt notice of any such claim;
 - 12.2.2.** the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
 - 12.2.3.** the Supplier is given sole authority to defend or settle the claim.
- 12.3.** 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.
- 12.4.** 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:
 - 12.4.1.** a modification of the Services or Documentation by anyone other than the Supplier;
 - 12.4.2.** the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by the Supplier;
 - 12.4.3.** the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority; or
 - 12.4.4.** data, content, information or materials provided by the Customer and uploaded, inputted or otherwise stored on the Software by or on behalf of the Customer, for which the Customer shall be solely responsible. The Supplier shall have no obligation to verify, validate or otherwise assess any data, content, information or materials provided by the Customer and

uploaded, inputted or otherwise stored on the Software by or on behalf of the Customer for accuracy, completeness, lawfulness or infringement of any third party rights. The Supplier may, upon receipt of any infringement notice or claim, investigate and immediately take down or suspend access to any such content pending completion of its investigation, without liability to the Customer.

- 12.5.** The foregoing and clause 13.2.1 state the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligation and liability, for infringement of any patent, copyright, trade mark, database right, right of confidentiality or other intellectual property rights.

13. Limitation of liability

- 13.1.** The following definitions apply in this clause 13:

13.1.1. liability: every kind of liability arising under or in connection with this Agreement including but not limited to liability in contract (including any indemnity), tort (including negligence), misrepresentation, restitution or otherwise; and

13.1.2. default: any act or omission resulting in one party incurring liability to the other.

- 13.2.** Except as expressly provided in this Agreement:

13.2.1. 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;

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

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

- 13.3.** Nothing in this Agreement excludes any liability which cannot legally be limited, including but not limited to liability for:

13.3.1. death or personal injury caused by a party's negligence; or

13.3.2. fraud or fraudulent misrepresentation.

- 13.4.** Subject to clause 13.2 and clause 13.3:

13.4.1. the Supplier shall not be liable for any of the following, howsoever arising under this Agreement:

(a) loss of profits;

(b) loss of business;

(c) depletion of goodwill and/or similar losses;

(d) loss or corruption of data or information;

(e) pure economic loss; or

(f) special, indirect or consequential loss, costs, damages, charges or expenses; and

13.4.2. the Supplier's total aggregate liability to the Customer in respect of all defaults arising in a Subscription Period shall be limited to the total Subscription Fees paid for the Subscriptions during that Subscription Period.

14. Term and termination

14.1. This Agreement shall, unless otherwise terminated as provided in this clause 14, commence on the Effective Date and shall continue for the first Subscription Period and, thereafter, shall be renewed for successive periods of equal length to the first Subscription Period (each a Subscription Period), unless:

14.1.1. 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 upon expiry of the applicable Subscription Period; or

14.1.2. 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.

14.1.3. advised by the Supplier in writing that the length of the Subscription Period has changed.

14.2. 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:

14.2.1. 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 45 days after being notified in writing to make such payment;

14.2.2. 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 30 days after being notified in writing to do so; or

14.2.3. the other party repeatedly breaches any of the terms of this Agreement in such a way that reasonably suggests it does not have the intention or ability to fulfil the terms of this Agreement; or

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

14.3. On termination of this Agreement for any reason:

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

14.3.2. subject to clause 14.3.3 below, 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;

14.3.3. each party shall:

(a) destroy or return to the other party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information;

(b) erase all the other party's Confidential Information from computer and communication systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically and legally practicable); and

(c) certify in writing to the other party that it has complied with the requirements of this clause, provided that a recipient party may retain documents and materials containing, reflecting, incorporating or based on the other party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority. The provisions of clause 11 shall continue to apply to any such documents and materials retained by a recipient party.

14.3.4. the Supplier shall destroy or otherwise dispose of any Customer Data in its possession after 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;

14.3.5. 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 this Agreement which existed at or before the date of termination shall not be affected or prejudiced;

14.3.6. where the Supplier destroys or otherwise disposes of Customer Data in accordance with clause 14.3.4, it shall provide written notice to the Customer confirming this within 30 days of such destruction or other disposal; and

14.3.7. any provision of this Agreement expressly or by implication is intended to come into or continue in force on or after termination of this Agreement shall remain in full force and effect.

15. 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.

16. Conflict

If there is an inconsistency between any of the provisions in the main body of this Agreement, the following order of precedence shall prevail: (1) the main body of the Agreement; (2) the Schedules; (3) the Data Processing Agreement; and (4) any other Documentation

17. Variation

17.1. The Supplier may revise this Agreement at any time by amending this page or the applicable document referred to in it. Where the Supplier intends to make any amendments to this Agreement, it shall provide written notice including details of the changes at least 30 days prior to making them.

17.2. If a proposed change notified in accordance with clause 17.1 would substantively alter the nature of the Services or otherwise be materially detrimental to the Customer, the Customer may terminate this Agreement and receive a pro-rata refund for the remaining time in the Subscription Period. For the avoidance of doubt, the Customer's continued use of the Services after any such

notification will constitute agreement to the new terms, and such continued use will be subject to the revised terms.

- 17.3.** Some of the provisions contained in this Agreement may also be superseded by provisions or notices published elsewhere on insighttracking.com or such other web address or mobile application through which the Services are provided to the Customer, as notified by the Supplier from time to time.

18. Waiver

A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

19. Severance

- 19.1.** 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.
- 19.2.** If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

20. Entire Agreement

- 20.1.** 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.
- 20.2.** 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.
- 20.3.** Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
- 20.4.** Nothing in this clause shall limit or exclude any liability for fraud.

21. Assignment

- 21.1.** 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.
- 21.2.** 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.

22. 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).

23. 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.

24. Notices

24.1. 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.

24.2. A notice shall be deemed to be received:

24.2.1. if delivered by hand, at the time the notice is left at the proper address;

24.2.2. if sent by pre-paid first-class post, at 9:00am on the second Business Day after posting;

24.2.3. if sent by email at the time of transmission, or, if this time falls outside Normal Business Hours when Normal Business Hours resume.

25. 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.

26. Dispute Resolution

26.1. If any dispute arises out of or in connection with this Agreement, including any dispute relating to its existence, validity or termination, the parties shall first attempt in good faith to resolve the dispute through discussions between senior representatives of each party.

26.2. Nothing in this clause shall prevent either party from seeking interim injunctive relief, urgent declaratory relief, debt recovery action, or any other remedy available through the courts at any time.

26.3. 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.

26.4. 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).

27. Offers

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

28. Mobile Use

Standard network charges may apply to the Customer's access to the Services via mobile. The Customer may incur, and shall be solely responsible for, any charges from its network operator in connection with the Customer's access of the Services according to its contract with them.

Schedule 1 Subscription fees

1. Subscription Fees

- 1.1.** The Subscription Fees are calculated based on the number of Active Pupils whose details are held within the Software and the subscription level selected at the time the Customer requests a quote for the Services. Where the Customer is a Multi Academy Trust with nominated Academies, the Subscription Fees are calculated based on the total number of Active Pupils across the Trust account and all nominated Academy accounts.
- 1.2.** The Subscription Fee for the Customer's first Subscription Period shall be as set out in the Sign Up Quote.
- 1.3.** The Supplier shall provide the Customer with a quote for each subsequent Subscription Period (Renewal Quote) at least 90 days before the end of the current Subscription Period. This will be based on the Supplier's then current prices and any discounts which the Supplier may opt to continue to extend to the Customer.
- 1.4.** Where the Supplier provides discounted Subscription Fees based on the Customer agreeing to a minimum multi-year commitment, and the Customer ends the Agreement before the end of that commitment period, the Supplier may recover the value of the discount applied during the affected Subscription Periods by invoicing the Customer for the difference between the discounted fees paid and the standard fees that would otherwise have applied.
- 1.5.** Where the Customer accepts a Sign Up Quote or Renewal Quote by electing to continue to receive the Services following the Free Trial Period or Subscription Period (as applicable) that quote shall form part of this Agreement and become the basis on which the Subscription Fees are calculated and charged.