

TERMS AND CONDITIONS

These terms and conditions (as amended under clause 30.3) (“**Conditions**”) govern the sale of Hardware, supply of Services and licensing of software by TIO to the Customer, as set out in the Quote and any Statement of Work. These Conditions apply to the exclusion of any other terms that the Customer seeks to impose, or which are implied by trade, custom, practice or course of dealing.

Note particularly clause 22

1. BASIS OF CONTRACT

- 1.1. Each Quote provided to the Customer shall be regarded as an explanation by TIO of what Hardware, Services or Licensed Software will be provided, and at what cost.
- 1.2. By expressing written agreement to the terms of the Quote, the Customer offers to purchase the Hardware, Services or software licences from TIO, as listed on the relevant Quote. Following receipt of the Customer’s signed Quote, TIO shall acknowledge the Customer’s signed Quote in turn, which shall form a contract in accordance with these Conditions, incorporating by reference any applicable ancillary documents (“**Contract**”). Should any other correspondence from the Customer contradict in any way the Quote or any of these Conditions (“**Contradictory Terms**”), such Contradictory Terms shall not be incorporated unless and to the extent that a revised Quote is issued incorporating any of the Contradictory Terms. A Contract shall come into existence either:
 - 1.2.1. immediately upon acknowledgment of the signed Quote by TIO; or
 - 1.2.2. on the start date set out in the Quote itself, whichever is later (“**Start Date**”).
- 1.3. After the Start Date, a Contract may not be terminated except in accordance with its terms.
- 1.4. Unless expressly stated to the contrary in the relevant Quote (or otherwise agreed in writing by TIO), each Quote is only valid for 30 days from its date of issue.
- 1.5. If there is an inconsistency between any of the provisions of a Contract, the following descending order of priority shall apply:
 - 1.5.1. Any Special Terms set out in the Quote itself, provided that each Special Term expressly states that it is modifying a clause of these Conditions, along with the relevant clause reference of the Condition being modified;
 - 1.5.2. the relevant Service Specification; and then
 - 1.5.3. these Conditions.
- 1.6. Each party warrants that:
 - 1.6.1. it has full capacity to enter into and perform its obligations under a Contract; and
 - 1.6.2. each Contract is executed by a duly authorised representative of that party, and where the Customer is a school, the Contract is executed by a duly authorised representative of the school’s governing body (i.e. an executive of the academy trust).
- 1.7. The warranties set out at clause 1.6 above are deemed to be repeated by each party in respect of each Contract on the applicable Start Date for the same.

2. SERVICES

- 2.1. The terms of this clause 2 apply with respect to any Services supplied pursuant to a Contract.
- 2.2. During the Term of the relevant Contract, in consideration for the payment of the Charges, TIO shall provide the applicable Services to the Customer materially in accordance with the relevant Quote, the applicable Service Specification and these Conditions.
- 2.3. When attending the Customer’s premises, TIO shall use reasonable endeavours to observe all health and safety and security requirements that apply at the Customer’s premises and that have been communicated to it in advance of the provision of the Services, provided that it shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract.
- 2.4. TIO will use its reasonable endeavours to supply all relevant Services in accordance with any performance metrics or performance dates set out and / or referred to in the Quote in respect of such Services. Any dates given are estimates only and time is not of the essence for the performance of the Services.
- 2.5. TIO shall have the right to make any changes to the Services which:
 - 2.5.1. improve the nature or quality of the Services;
 - 2.5.2. are necessary to comply with Applicable Law;
 - 2.5.3. result from a Sourcing Issue; or

- 2.5.4. do not materially negatively affect the nature or quality of the Services, and TIO shall notify the Customer in any such event. Such notification shall include any variations to the Charges which TIO reasonably considers to be necessary in light thereof.
- 2.6. Where there is a Default on the part of the Customer, TIO (without limiting its other rights or remedies) may suspend performance (and is relieved from its performance obligations) until the Customer remedies the same. The Customer shall be liable for any costs incurred by TIO.
- 2.7. Where the Customer purchases a set number of hours or days' worth of a given Service, TIO shall devote such time as has been purchased by the Customer in advance to the provision of the same.
- 2.8. Unless specifically authorised to do so by the Customer in writing, TIO shall not:
 - 2.8.1. have any authority to incur any expenditure in the name of or for the account of the Customer; or
 - 2.8.2. hold themselves out as having authority to bind the Customer.

3. PERSONNEL AND MANAGEMENT

- 3.1. Each party shall ensure that all Personnel are suitably qualified, adequately trained and capable of performing the activities they have been tasked with performing under a Contract.
- 3.2. Unless otherwise agreed in the Quote and subject to clause 3.1 above, the selection of Personnel is at the sole discretion of the relevant party.
- 3.3. With respect to the provision of Regulated Activities under a Contract, TIO shall:
 - 3.3.1. ensure that all TIO Personnel engaged in Regulated Activities are subject to a valid enhanced disclosure check for Regulated Activity undertaken through the Disclosure and Barring Service;
 - 3.3.2. monitor the level and validity of the checks under this clause 3.3 for each member of TIO Personnel; and
 - 3.3.3. not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activities.

4. CUSTOMER RESPONSIBILITIES

- 4.1. The Customer shall:
 - 4.1.1. provide all necessary co-operation reasonably required in relation to a Contract;
 - 4.1.2. comply with any and all obligations which are set out in the Quote which are stated to be performed by the Customer, together with any other obligations which are apparent or would be ordinarily expected to be complied with by the Customer in the ordinary course of receipt of similar services;
 - 4.1.3. provide such assistance from the Customer Personnel as may be reasonably requested by TIO from time to time;
 - 4.1.4. ensure that the terms of each Contract are complete and accurate;
 - 4.1.5. respond promptly to any request for a decision, guidance, information or instruction which TIO may submit in relation to a Contract from time to time;
 - 4.1.6. not do or permit anything to be done that will or may damage the business, reputation, image and / or good will of TIO;
 - 4.1.7. only use the Services for lawful purposes and shall not use the Services:
 - 4.1.7.1. in any way that breaches any Applicable Law;
 - 4.1.7.2. in any way that is unlawful or fraudulent, or has any unlawful or fraudulent purpose or effect;
 - 4.1.7.3. for the purpose of harming or attempting to harm minors in any way;
 - 4.1.7.4. to transmit, or procure the sending of, any unsolicited or unauthorised advertising or promotional material or any other form of similar solicitation (spam);
 - 4.1.7.5. knowingly to transmit any data, send or upload any material that contains Harmful Code;
 - 4.1.8. ensure that there are in place all necessary consents, licences and permissions required to permit TIO to access and use all the Customer Content and any other items as may be appropriate in connection with each and every Contract;
 - 4.1.9. without diminishing TIO's responsibility to provide Services relating to connectivity, be solely responsible for procuring and maintaining its network connections and telecommunications links

from its systems to TIO's hosting environment (or, where appropriate, the third party portal through which TIO provides Services to the Customer).

- 4.2. The Customer shall not attempt to probe, scan, penetrate or test the vulnerability of any of TIO's systems or networks or breach any of TIO's security or authentication measures, whether by passive or intrusive techniques, without TIO's prior written consent.

5. HARDWARE

- 5.1. The terms of this clause 5 apply in respect of any Hardware supplied by TIO to the Customer pursuant to a Contract.
- 5.2. TIO shall supply the Hardware to the Customer as detailed in the relevant Quote.
- 5.3. Hardware delivery dates are approximate only and time of delivery is not of the essence. Delivery shall be completed on the Hardware's arrival at the Delivery Location. The Customer is responsible for unloading, and any unloading that takes place shall be at the Customer's risk, unless expressly stated to the contrary in the Quote.
- 5.4. Subject to clause 5.3 above, TIO shall deliver the Hardware to the Delivery Location in material accordance with any delivery schedule agreed as part of the Quote.
- 5.5. If the Customer fails to accept or take delivery of the Hardware (including failing to provide appropriate delivery instructions to TIO), TIO shall store the Hardware until delivery takes place, and may at its option charge the Customer for all related costs and expenses (including insurance).
- 5.6. Where 10 Working Days have elapsed since TIO attempted to re-deliver the Hardware to the Delivery Location, and / or where TIO has notified the Customer to arrange another delivery following failure of the first and the Customer has not engaged with this correspondence, then TIO may resell or otherwise dispose of all of the Hardware or any part of it, and after deducting reasonable storage and selling costs, charge the Customer for any shortfall below the price of the Hardware.
- 5.7. TIO may deliver in instalments, which may (at TIO's option) be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 5.8. Risk in the Hardware shall pass to the Customer on completion of delivery at the Delivery Location.
- 5.9. Title to the Hardware shall not pass to the Customer until TIO has received payment in full (in cleared funds) for the Hardware. Until title has passed to the Customer, the Customer shall:
- 5.9.1. hold the Hardware on a fiduciary basis as TIO's bailee;
 - 5.9.2. store the Hardware separately from all other hardware and ensure that it is readily identifiable as TIO's property;
 - 5.9.3. not remove, deface or obscure any identifying mark or packaging on or relating to the Hardware;
 - 5.9.4. maintain the Hardware in satisfactory condition and keep it insured on TIO's behalf against all risks for its full price; and
 - 5.9.5. give TIO such information relating to the Hardware as TIO requires, notwithstanding that the Customer may use the Hardware in its ordinary course of business.
- 5.10. Where the Customer experiences an Insolvency Event (or TIO believes that the same is about to occur) before title to the Hardware passes to the Customer, if the Hardware has not been irrevocably incorporated into another product or service, (without limiting any other right or remedy TIO may have) TIO may demand the Customer deliver up the Hardware and, if the Customer fails to do so promptly, enter the Site(s) where the Hardware is stored to recover it. The Customer shall ensure that TIO shall have similar rights of entry with respect to any third party who takes possession of the Hardware prior to the passage of title from TIO to the Customer.
- 5.11. For the avoidance of doubt, where TIO supplies Hardware to the Customer on a temporary basis as part of the Services (e.g. to enable the Customer's operations to continue whilst new equipment is procured), TIO gives no warranty with respect to the condition of such Hardware, nor to its fitness for any purpose, even where such purpose is known to TIO prior to the provision of the Hardware.

6. CONFIGURATION AND INSTALLATION SERVICES

- 6.1. The terms of this clause 6 apply where TIO has agreed under a Contract to provide any Configuration and Installation Services.
- 6.2. The Customer shall in a timely manner:
- 6.2.1. provide all the Customer Content;
 - 6.2.2. prepare the Site, equipment and existing systems (or those of its third party contractors); and

- 6.2.3. facilitate such access to the Site, equipment and existing systems (or those of its third party contractors), as may be needed for TIO to perform the Configuration and Installation Services.
- 6.3. TIO shall carry out any such Configuration and Installation Services remotely, (or, at TIO's option where applicable, at the Site), and subject the results of such services (the "**Configuration**") to its standard installation and acceptance tests, or such tests as are specified in the applicable Quote.
- 6.4. The Customer shall be deemed to have accepted the Configuration if either:
 - 6.4.1. the installation testing is certified by TIO to be successful;
 - 6.4.2. the Customer fails to provide the data or results necessary for testing to be undertaken within the time limits specified in the Quote (or if none are specified, within a reasonable time); or
 - 6.4.3. the Customer commences operational use of the Configuration.

7. LICENSED SOFTWARE

- 7.1. The terms of this clause 7 apply where the Customer licenses any Licensed Software from TIO.
- 7.2. In consideration for the payment of all applicable Charges, TIO hereby grants to the Customer a non-exclusive licence for the Term to use the Licensed Software.
- 7.3. Use of the Licensed Software shall be restricted to:
 - 7.3.1. a non-exclusive, royalty free licence;
 - 7.3.2. object code form;
 - 7.3.3. the normal business/educational purposes of the Customer; and
 - 7.3.4. employees of the Customer.
- 7.4. For a period of:
 - 7.4.1. with respect to the Local Software, 60 days from delivery; and
 - 7.4.2. with respect to the Cloud Software, the term for which the Cloud Software is licensed,
 TIO warrants that the Licensed Software will perform in accordance with its Documentation in all material respects. The Customer's sole remedy for breach of the warranty under this clause 7.4 shall be the correction of the Defect by TIO within a reasonable time from notification by the Customer of the same.
- 7.5. TIO shall provide to the Customer, from time to time, copies of the Documentation containing sufficient up-to-date information for the proper use and maintenance of the Licensed Software. Such Documentation may be supplied in electronic form.
- 7.6. The Customer may make such further copies of the Documentation as are reasonably necessary for the use and maintenance of Licensed Software and for training the Customer Personnel in use of Licensed Software. The Customer shall ensure that all of TIO's proprietary notices are reproduced in any such copy. The Customer may provide copies of the Documentation to any third party who needs to know the information contained in it, provided that such third party first enters into appropriate confidentiality obligations no less stringent than those contained in these Conditions.
- 7.7. Any unauthorised modifications, use or improper installation of Licensed Software by the Customer (or on behalf of the Customer, other than by TIO Personnel) shall render all TIO's warranties and obligations under the Contract null and void. TIO shall not be obliged to rectify any particular Defect if attempts to rectify such Defect other than normal recovery or diagnostic procedures have been made by the Customer Personnel or third parties without the permission of TIO.
- 7.8. Notwithstanding any other provision, TIO specifically denies any implied or express representation that the Licensed Software will:
 - 7.8.1. be fit to operate in conjunction with any hardware items or software products other than with those that are identified in the relevant Documentation as being compatible with the Local Software; or
 - 7.8.2. operate uninterrupted or error-free.
- 7.9. The Customer may not use the Licensed Software other than as specified in this clause without the prior written consent of TIO, and the Customer acknowledges that additional fees may be payable on any change of use approved by TIO.
- 7.10. Except as expressly licensed, the Customer has no right (and shall not permit any third party) to copy, adapt, reverse engineer, access all or any part of the Licensed Software in order to develop software which competes with the same, decompile, disassemble, modify, adapt or make error corrections to the same in whole or in part.
- 7.11. The Customer shall not:
 - 7.11.1. sub-license, assign or novate the benefit or burden of the licence to the Licensed Software in whole or in part;

- 7.11.2. allow the Licensed Software to become the subject of any charge, lien or encumbrance; or
- 7.11.3. deal in any other manner with any or all of its rights and obligations under the Contract, without the prior written consent of TIO.
- 7.12. The Customer shall:
 - 7.12.1. notify TIO as soon as it becomes aware of any unauthorised use of the Licensed Software by any person; and
 - 7.12.2. pay for broadening the scope of the licences granted under the Contract to cover the unauthorised use, an amount equal to the fees which TIO would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorised use on the date when such use commenced together with interest at the rate provided for under these Conditions, from such date to the date of payment.

8. OPEN-SOURCE SOFTWARE

- 8.1. The terms of this clause 8 apply where Open-Source Software is made available to the Customer pursuant to a Contract, whether as part of the Configuration, the Local Software or otherwise.
- 8.2. The Customer acknowledges and agrees that:
 - 8.2.1. TIO is making such Open-Source Software available pursuant to the terms of the applicable End User Agreement and such software is provided "as is" and expressly subject to the disclaimer in clause 22.1;
 - 8.2.2. any such Open-Source Software provided by TIO may only be used according to the terms and conditions of the End User Agreement; and
 - 8.2.3. it shall comply with the terms of the End User Agreement.

9. MIS SUPPORT SERVICES

- 9.1. The terms of this clause 9 apply where the Customer orders MIS Support Services from TIO.
- 9.2. TIO shall provide the MIS Support Services for the MIS remotely (or at TIO's option, at the Site) to the Customer in accordance with the description and Service Specification set out or linked to in the Quote.
- 9.3. On the Customer informing TIO within Maintenance Support Hours of a support incident, TIO shall render such assistance as its level of expertise and access to the relevant MIS shall permit.
- 9.4. TIO reserves the right to charge for additional MIS Support Services at its standard rates then in force where the Customer's requirements exceed the average time and materials requirements for similar TIO customers.

10. TECHNICAL SUPPORT/Consultancy SERVICES

- 10.1. The terms of this clause 10 apply where the Customer orders Technical Support or Consultancy Services from TIO.
- 10.2. TIO shall provide the Technical Support Services or Consultancy Services remotely (or at TIO's option, at the Site) to the Customer in accordance with the Service Specification and the number of hours purchased by the Customer.
- 10.3. Where the Customer has purchased any Licensed Software, TIO will from time to time make Upgrades available to the Customer as part of the Technical Support Services, including any amendments to the Documentation required for the use of the Upgrade.
- 10.4. Where an Upgrade becomes available, the Customer shall permit TIO to install such Upgrade within 3 months of TIO notifying the Customer that it is available for installation.
- 10.5. On the Customer informing TIO within Maintenance Support Hours of a support incident with respect to the Software and/or hardware which falls within TIO's remit, TIO shall assist the Customer to rectify the Support Incident using Good Industry Practice.
- 10.6. With respect to Additional Support:
 - 10.6.1. TIO is not obliged to perform any Additional Support unless the Customer has agreed to pay the applicable Charges in respect of it; and
 - 10.6.2. where TIO is performing or has performed the Technical Support Services in circumstances where it is subsequently established that the support incident was due to any of the Excluded Causes,

TIO may charge, and the Customer shall pay, the applicable additional Charges in respect of that work.

- 10.7. Any Charges for Additional Support shall be calculated on a time and materials basis.
- 10.8. The Customer acknowledges that TIO does not manufacture hardware, and the extent to which TIO is able to effect repairs or replacements of any item of hardware depends upon the third-party hardware guarantees provided by the manufacturer, and the extent to which the manufacturer chooses to comply with the same.
- 10.9. Save where otherwise agreed in writing, TIO shall not source spare parts required to restore any item of hardware to Good Working Order unless requested to do so by the Customer. TIO shall have the right to charge the Customer for any spare parts, together with the time incurred in sourcing them, in accordance with the Standard Rates.
- 10.10. All spare parts and/or replacements provided by TIO to the Customer shall become the property of the Customer. TIO hereby assigns to the Customer (by way of future assignment), with full title guarantee and free from all third party rights, all spare parts and/or replacements provided by TIO.

11. CURRICULUM SUPPORT SERVICES

- 11.1. The terms of this clause 11 apply where TIO has agreed under a Contract to provide Curriculum Support Services.
- 11.2. TIO shall provide the Curriculum Support Services in accordance with the relevant Service Specification.
- 11.3. The Customer acknowledges and agrees that:
 - 11.3.1. any individual identified in the Quote or otherwise may be replaced at any time with another qualified individual at TIO's option; and
 - 11.3.2. any materials provided in respect of Curriculum Support Services are licensed to the Customer solely for the purposes of the receipt of such services.

12. CLOUD SERVICES

- 12.1. The terms of this clause 12 apply where the Customer orders a Cloud Service from TIO.
- 12.2. The Customer's access to the Cloud Services shall be limited to the Authorised Users who are licensed to use the applicable Cloud Software.
- 12.3. With respect to Cloud Software:
 - 12.3.1. "use" of the Cloud Software means accessing the Cloud Software remotely via TIO's hosting environment, solely in accordance with the Documentation; and
 - 12.3.2. the Customer acknowledges that backup copies of the Cloud Software are not required, as it is not locally installed at the Site.
- 12.4. The Customer shall ensure that each Authorised User keeps a secure password for their use of the Cloud Services, that such password is changed when prompted to do so, and that each Authorised User keeps their password confidential.
- 12.5. In the event of a failure to comply with its obligations relating to the Cloud Services, TIO will use all reasonable commercial endeavours to correct the same 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 this clause. The obligations in this clause shall not apply to the extent any failure is caused by a Force Majeure Event or any Default by the Customer.
- 12.6. TIO shall use reasonable endeavours to ensure that the Cloud Services are available 24 hours a day, 7 days a week, however TIO does not warrant that the Customer's use of the Cloud Services will be uninterrupted or error-free.
- 12.7. TIO shall follow the archiving procedures for Customer Content stored as part of the Cloud Services as described in the Documentation. However, it is the responsibility of the Customer to ensure Customer Content is appropriately backed-up.

13. BACK-UP SERVICES

- 13.1. The terms of this clause 13 apply where the Customer orders Back-Up Services from TIO.
- 13.2. The Customer acknowledges and agrees that:
 - 13.2.1. TIO is an agent of the Provider of the Back-Up Services;
 - 13.2.2. TIO is not providing the Back-Up Services to the Customer; and
 - 13.2.3. the Provider is supplying the Back-Up Services directly to the Customer subject to the terms of the End User Agreement located at <https://www.redstor.com/end-user-licence-agreement/>.

14. BROADBAND SERVICES

- 14.1. The terms of this clause 14 apply where the Customer orders Broadband Services from TIO.
- 14.2. Where TIO is reselling Broadband Services provided by Exa Networks, the Customer acknowledges and agrees that:
 - 14.2.1. TIO is an agent of the Provider of the Broadband Services;
 - 14.2.2. TIO is not providing the Broadband Services to the Customer; and Exa Networks is supplying the Broadband Services directly to the Customer subject to the terms and conditions located at <https://exa.net.uk/about-contact/terms-policies/>.
- 14.3. Where clause 14.2 does not apply and Subject to an availability check, TIO shall supply the Broadband Services in accordance with the relevant product handbook.
- 14.4. The Customer acknowledges that once agreed, an installation date and time for the Broadband Services cannot be changed without incurring a cancellation Charge.
- 14.5. TIO will notify the Customer as soon as is reasonably practicable if it requires access to the Site to conduct a Survey or install the Broadband Services or to carry out repairs, maintenance or upgrades. Where such notice is received by the Customer, the Customer shall allow TIO or its sub-contractor access to the Site at a pre-arranged appointment time.
- 14.6. The Customer acknowledges that, whilst TIO shall take all reasonable steps to minimise property damage during installation or maintenance of the Broadband Services, the Customer is responsible for any remedial works, including any decorating, required following such installation or maintenance.

15. GDPR SERVICES

- 15.1. The terms of this clause 15 apply where the Customer orders the Data Protection Assistance Service from TIO.
- 15.2. Subject to clause 15.3 below, TIO warrants that it will use Good Industry Practice in the provision of all assistance and advice with respect to compliance with Data Protection Law.
- 15.3. The warranty at clause 15.2 above is subject to the Customer having:
 - 15.3.1. provided TIO with accurate and complete information; and
 - 15.3.2. allowed sufficient time for the provision of the relevant service, with due regard to any time limits prescribed under Data Protection Law.
- 15.4. The Customer acknowledges that primary responsibility for compliance with Data Protection Law rests with the Customer.
- 15.5. Any dispute arising out of the provision of the Data Protection Assistance Service or compliance by either party with its obligations in connection with the same shall be subject to the judgment of a third party expert appointed by the Society for Computers and Law.

16. CHANGE CONTROL

- 16.1. Where a party identifies a need to change the Quote, they may at any time request such a change.
- 16.2. The party proposing the change shall notify the other party in writing, specifying the change in as much detail as is reasonably practicable ("**Change Request**").
- 16.3. Where TIO has requested the change, the Change Request shall take the form of a signed variation to the Contract.
- 16.4. Where the Customer has requested the change, TIO shall provide a written estimate as soon as reasonably practicable to TIO of:
 - 16.4.1. the likely time required to implement the change;
 - 16.4.2. any necessary variations to the Charges arising from the change;
 - 16.4.3. any necessary variations to the resources of either party arising from the change; and
 - 16.4.4. any other impact of the change on a Contract.
- 16.5. The other party shall evaluate the Change Request, or the written response thereto (as applicable) and give its answer as soon as reasonably practicable.
- 16.6. Until such time as a Change Request is agreed and electronically signed by both parties, the Services shall, unless otherwise agreed in writing, continue to be performed in compliance with the terms of the Contract as they existed prior to such change. For the avoidance of doubt, written agreement by email is insufficient.

17. CHARGES

- 17.1. The Charges are set out in the Quote. Where the Quote does not include a breakdown of Charges or the means by which they can be calculated, they shall be on a time and materials basis in accordance with the Standard Rates.
- 17.2. Except where expressly agreed in writing to the contrary, the Charges shall not include travel or accommodation expenses, which shall become payable upon production of mileage claims/appropriate receipts.
- 17.3. On no less than 12 weeks' written notice to the Customer, such notice to expire on the anniversary of the Start Date, TIO may, (in addition to any other amendment to the Charges permitted pursuant to these Conditions), increase the Charges by a percentage equal to the percentage increase in the retail price index since the Charges were originally set or last revised, as appropriate.
- 17.4. If it is reasonably apparent that any of the Charges in the Quote are incorrect ("**Obvious Charging Error**"), the Customer shall notify TIO of the same. When TIO becomes aware of an Obvious Charging Error, it shall promptly notify the Customer of the error together with the correct Charges/charging basis ("**Correct Charges**"). Following notification of the Correct Charges, such Charges shall apply in place of the Obvious Charging Error. If the Customer objects to the Correct Charges, it may terminate the relevant Contract on written notice to TIO, provided such notice is received no less than 5 Working Days after the Customer is informed in writing of the Correct Charges.
- 17.5. If the Customer receives an invoice which it reasonably believes includes a sum which is in excess of what is valid and properly due, it shall inform TIO of the same within 10 Working Days of receiving the invoice, whether paid or unpaid. Failure to notify TIO within the above window shall constitute the Customer's agreement to the amount invoiced.
- 17.6. If performance of the Services is delayed at the request of the Customer, or because of any acts or omissions of the Customer, the parties may agree revised dates for performance. At its discretion, TIO may:
- 17.6.1. apply a reasonable increase to the Charges as a result of such delay; and
- 17.6.2. invoice the Customer for a proportion of the Charges incurred as of the date of the delay.
- 17.7. Where a failure of the Customer to comply with its obligations in the Contract (including those set out in these Conditions as well as the Quote) results in additional costs for TIO and/or wasted time, TIO may charge the Customer for the same on a time and materials basis. In order to calculate the same, TIO's Standard Rates shall apply unless other rates are specified in the Quote.
- 17.8. Unless otherwise specified to the contrary in the applicable Quote, the Charges shall become due as described in the table below:

Cloud Services	Annually in advance
Configuration and Installation Services	On completion
Consultancy Services	One school term in advance
GDPR Services	Annually in advance
Hardware	Upon delivery.
Licences for Local Software	
MIS Support Services	
Curriculum Support Services	One school term in advance
Broadband Services	
Back-Up Services	Annually in advance
Technical Support Services	Invoiced each school term.

- 17.9. The Customer shall pay each invoice which is properly due and submitted to it by TIO within 30 days of the invoice date to a bank account nominated in writing by TIO. If TIO has not received a payment which is validly due within such period, and without prejudice to any other rights and remedies it may have (but subject to any Applicable Law in force at the time which restricts or excludes the same), TIO may charge interest on a daily basis on such due amounts at the rate of 4% per annum above the base rate of Barclays Bank PLC from time to time (with a minimum of 4% where the bank's base rate is less than or equal to 0%) commencing on the Due Date and continuing until fully paid, whether before or after judgment. Such interest shall accrue on a daily basis and be compounded quarterly.
- 17.10. All Charges stated or referred to in a Contract are exclusive of value added tax or other sales taxes, which shall be added to TIO's invoice(s) at the appropriate rate.
- 17.11. TIO may, without limiting its other rights or remedies, set off any amount owed to it by the Customer or any Affiliate against any amount payable by TIO to the Customer.

18. INTELLECTUAL PROPERTY

- 18.1. All Intellectual Property Rights belonging to a party prior to the relevant Start Date shall remain vested in that party.
- 18.2. TIO warrants that it has, and will continue to have, all necessary rights in and to any and all Intellectual Property Rights that it purports to grant to the Customer pursuant to a Contract. The Customer warrants to TIO that TIO's possession and use in accordance with these Conditions of any materials (including third party materials supplied by the Customer to TIO) shall not cause TIO to infringe the rights, including any Intellectual Property Rights, of any third party.
- 18.3. The Customer acknowledges and agrees that:
- 18.3.1. unless and to the extent expressly stated to the contrary in the Quote, TIO and/or its licensors own all Intellectual Property Rights in the Services, provided that the Customer is hereby granted by TIO a non-exclusive, worldwide, royalty free licence to use the same to the extent envisaged under the relevant Contract for the normal business/educational purposes of the Customer;
- 18.3.2. any Open-Source Software provided to the Customer is owned by its licensors.
- 18.4. Except as expressly stated herein, these Conditions do not grant the Customer any Intellectual Property Rights or any other rights or licences to, in, or in respect of the Services.
- 18.5. TIO acknowledges and agrees that the Customer and/or its licensors own all Intellectual Property Rights in the Customer Content. Except as expressly stated herein or as is necessary to perform TIO's obligations under a Contract, these Conditions do not grant TIO any Intellectual Property Rights or any other rights or licences to or in respect of any Customer Content.
- 18.6. Nothing in these Conditions shall be construed so as to prevent TIO from using in the furtherance of its own business general know-how or expertise gained in its performance of a Contract, provided that any such use does not constitute or result in a disclosure of any Confidential Information in breach of clause 19 or infringement of any Intellectual Property Rights.

19. CONFIDENTIALITY

- 19.1. Each party undertakes that it shall not at any time during a Contract, and for a period of 3 years after termination of a Contract, disclose to any person any Confidential Information concerning the other party, except as permitted by clause 19.2 below. A party's Confidential Information shall not include information that:
- 19.1.1. is or becomes publicly known other than through any act or omission of the receiving party;
- 19.1.2. was in the other party's lawful possession before the disclosure;
- 19.1.3. is lawfully disclosed to the receiving party by a third party who is not (to the recipient's reasonable knowledge and belief) bound by obligations of confidentiality in respect of it; or
- 19.1.4. is independently developed by the receiving party, which independent development can be shown by written evidence.
- 19.2. Each party may disclose the other party's Confidential Information:
- 19.2.1. to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with a Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's Confidential Information comply with this clause 20; and
- 19.2.2. as may be required by law, a court of competent jurisdiction, or any governmental or regulatory authority.
- 19.3. No party shall use any other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with a Contract.
- 19.4. Each party shall establish and maintain adequate security measures to safeguard any Confidential Information disclosed to it by the other party from unauthorised access or use, in accordance with Good Industry Practice.
- 19.5. TIO may publicise its involvement with the Customer for its own marketing purposes, and any such publication shall not constitute an unlawful disclosure of Confidential Information for the purposes of this clause 20.

20. DATA PROTECTION

- 20.1. Whenever TIO processes Shared Personal Data:
- 20.1.1. the Customer shall be the data controller and TIO shall be the data processor in respect of all Shared Personal Data;

- 20.1.2. TIO shall only process Shared Personal Data on the Customer's documented instructions except insofar as required to do otherwise by Data Protection Law and in full compliance with these Conditions; and
- 20.1.3. TIO shall inform the Customer on becoming aware of any instruction from the Customer in relation to the processing of Shared Personal Data which, in TIO's reasonable opinion, infringes Data Protection Law.
- 20.2. Taking into account the nature, scope, context and purposes of processing as well as the risk to the rights and freedoms of natural persons, TIO shall:
 - 20.2.1. implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk; and
 - 20.2.2. in assessing the appropriate level of security measures to be taken under clause 20.2.1 above, TIO shall take account of the risks that are presented by the processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to personal data transmitted, stored or otherwise processed.
- 20.3. TIO shall ensure that its employees, and any other persons with access to personal data TIO processes on the Customer's behalf are made aware of their data protection and security obligations and are subject to binding obligations of confidentiality with respect to any Shared Personal Data they process.
- 20.4. With respect to sub-processors:
 - 20.4.1. the Customer acknowledges and expressly agrees that TIO may transfer Shared Personal Data to sub-processors if such transfer is done in accordance with the terms of this clause 21;
 - 20.4.2. before authorising a new sub-processor to process Shared Personal Data in connection with this Contract, TIO will inform the Customer about such intended changes concerning the addition or replacement of sub-processor(s);
 - 20.4.3. if the Customer reasonably objects to the processing of personal data by one or more such new sub-processors, the Customer shall notify TIO in writing within 30 days after receipt of TIO's notification;
 - 20.4.4. in the event the Customer reasonably objects to any new sub-processor, TIO will use reasonable efforts to recommend a commercially reasonable change to the Services to avoid the processing of Shared Personal Data by the sub-processor concerned; and
 - 20.4.5. where a sub-processor fails to fulfil its data protection or confidentiality obligations, TIO shall remain fully liable to the Customer for the performance of (or failure to perform) those obligations.
- 20.5. If a data subject makes a request relating to the exercise of his or her legal rights in relation to Shared Personal Data, TIO shall provide the Customer with any information and assistance reasonably required by the Customer in order to respond to that request without undue delay, subject to payment by the Customer of TIO's reasonable costs.
- 20.6. TIO shall cooperate with any requests made by a supervisory authority in connection with the Contract.
- 20.7. If TIO becomes aware of a personal data breach relating to any Shared Personal Data processed on the Customer's behalf, TIO shall:
 - 20.7.1. notify the Customer without undue delay and provide details of the nature of the personal data breach, including where possible, the categories and approximate number of data subjects and personal data records concerned; and
 - 20.7.2. provide the Customer with such information and assistance as it reasonably requires in relation to the personal data breach.
- 20.8. Shared Personal Data that TIO processes on the Customer's behalf may be processed in any country in which TIO, its Affiliates or authorised sub-processors maintain facilities and the Customer authorises TIO to perform any such transfer of Shared Personal Data to any such country and to process Shared Personal Data in such country, provided that the transfer complies with Data Protection Law.
- 20.9. TIO shall (subject to the Customer providing appropriate confidentiality undertakings) make available to the Customer all assistance and information reasonably necessary to demonstrate its compliance with Data Protection Law, including reasonable cooperation during Normal Working Hours and upon reasonable notice, with audits and/or inspections conducted by or on behalf of the Customer or another auditor mandated by the Customer.

21. FREEDOM OF INFORMATION

- 21.1. TIO recognises that the Customer may have information disclosure obligations under the FOIA.

- 21.2. TIO agrees to provide, at the Customer's own cost, such assistance and support as may be requested from time to time by the Customer for the purposes of enabling or assisting the Customer to comply with these information disclosure obligations in respect of matters relating to or arising out of a Contract.
- 21.3. In the event that a request made to the Customer for access to information under the FOIA, or any notice, recommendation or complaint is made to or against the Customer in relation to its obligations under the FOIA, TIO will, without undue delay, provide to the Customer any details in its possession relating to a Contract or to TIO itself, as the Customer may require to deal with such access request or deal with such notice, recommendation or complaint.

22. WARRANTIES, INDEMNITIES AND LIMITATION OF LIABILITY

- 22.1. All representations or warranties (whether written or oral, express or implied by statute, common law or otherwise) apart from those expressly set out in these Conditions are hereby excluded. In particular, but without prejudice to the generality of the foregoing, TIO makes no representation or gives any warranty (whether express or implied, statutory and/or otherwise), and will have no liability regarding the fitness of the Services or the Hardware for any purpose, whether or not such purpose is disclosed to TIO.
- 22.2. The Customer hereby indemnifies TIO from and against any and all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by TIO in connection with:
- 22.2.1. TIO's storage, handling and processing of any Customer Content;
- 22.2.2. any failure of the Customer to obtain appropriate licences and/or consents in accordance with its obligations under these Conditions or any subsequent revocation or non-renewal of any such licence and/or permit;
- 22.2.3. any failure of the Customer to ensure its compliance with Applicable Law in accordance with its obligations under these Conditions;
- 22.2.4. the Customer's breach of any End User Agreement; and
- 22.2.5. any other Customer Default.
- 22.3. TIO shall defend the Customer, its officers, directors and employees against any claim that the Licensed Software infringes any United Kingdom patent effective as of the Start Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts finally awarded against the Customer in judgment or settlement of such claims, provided that:
- 22.3.1. TIO is given prompt notice of any such claim;
- 22.3.2. the Customer provides reasonable co-operation to TIO in the defence and settlement of such claim (at TIO's expense, provided such expenses are reasonable and can be evidenced to TIO's satisfaction); and
- 22.3.3. TIO is given sole authority to defend or settle the claim.
- 22.4. In the defence or settlement of any claim, the Customer's exclusive remedy shall be for TIO to procure the right for the Customer to continue using the Licensed Software, replace or modify it so that it becomes non-infringing or, if such remedies are not reasonably available, terminate the Contract on 2 Working Days' written notice to the Customer.
- 22.5. In no event shall TIO, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement which is the subject of a claim against TIO pursuant to clause 22.4 above is based on:
- 22.5.1. a modification of the Services or any Licensed Software by anyone other than TIO;
- 22.5.2. the Customer's use of the Licensed Software or the Services in a manner contrary to the instructions/use given to the Customer by TIO; or
- 22.5.3. the Customer's use of the Licensed Software or Services after notice of the alleged or actual infringement from TIO or any appropriate authority.
- 22.6. The foregoing states the Customer's sole and exclusive rights and remedies, and TIO's (including its employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.
- 22.7. The following provisions set out the entire financial liability of either party (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the other in respect of:
- 22.7.1. any breach of a Contract howsoever arising; and
- 22.7.2. any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with a Contract.
- 22.8. Nothing in these Conditions shall limit or exclude TIO's or the Customer's liability for:
- 22.8.1. any indemnity granted under these Conditions;

- 22.8.2. death or personal injury caused by its negligence, or the negligence of its employees, agents or sub-contractors;
 - 22.8.3. fraud or fraudulent misrepresentation; and
 - 22.8.4. any other liability which cannot be limited or excluded by Applicable Law.
- 22.9. Subject to clause 22.8 above, TIO's liability in respect of loss or damage under a Contract shall not exceed a sum equal to the total Charges paid and payable to TIO by the Customer under such Contract for the Service giving rise to the claim (excluding any Charges paid in respect of the purchase of Hardware or the Back-Up Services) during the period of 12 months immediately prior to the event giving rise to the claim, however that liability arises including breach of contract, tort, misrepresentation or breach of statutory duty.
- 22.10. Subject to clause 23.8, in no event will TIO be liable to the Customer (whether in contract, tort, negligence or otherwise):
- 22.10.1. for any delay in performance of the Services or any failure to perform the Services that is caused or contributed to by a Force Majeure Event or any Customer Default;
 - 22.10.2. for any damage caused by errors or omissions in any information, instructions or scripts provided to TIO by the Customer, or any actions taken by TIO at the Customer's direction;
 - 22.10.3. for any loss not flowing directly and naturally in the ordinary course of events from its own act or omission;
 - 22.10.4. for any loss of profit, revenue, use, anticipated savings, data, goodwill or opportunity or damage to reputation;
 - 22.10.5. for any indirect, special or consequential loss or damage;
 - 22.10.6. to the extent that any delay in performing or failure to perform TIO's obligations is due to a failure by the Customer to perform its own obligations under a Contract or if delay results from a failure by the Customer to comply with reasonable requests by TIO for instructions, information or action required by it to perform its obligations within a reasonable time; or
 - 22.10.7. for the consequences of any acts or omissions of the Customer or the Customer Personnel.
- 22.11. In the event of any loss or damage to Customer Content, the Customer's sole and exclusive remedy shall be for TIO to use reasonable commercial endeavours to restore the same from its latest back-up maintained by TIO in accordance with its archiving procedure.
- 22.12. In no event shall TIO be liable for any loss, destruction, alteration or disclosure of Customer Content caused by any third party (except those third parties sub-contracted by TIO to perform services related to maintenance and back-up).

23. TERM AND TERMINATION

- 23.1. Each Contract shall commence on the Start Date and continue for the Initial Term stated in the relevant Quote and shall renew for any Term Extensions as set out in clause 24.2 below (the "Term") unless:
- 23.1.1. either party gives to the other written notice to terminate in accordance with the notice period applicable to the relevant Service as set out in clause 24.2 below; or
 - 23.1.2. the Contract is otherwise terminated in accordance with its terms.

23.2. Termination notice and Term Extensions shall be as set out below:

Service	Termination Notice Period	Term Extension
All services (save for those set out below)	3 months, expiring at the end of the Initial Term or any Renewal Period, as applicable	1 year
Configuration and Installation Services	NA – provision of Configuration and Installation Services will terminate in accordance with the agreed scope	as agreed in writing by the parties on a case-by-case basis
Curriculum Support Services, Technical Support Services	4 months, expiring at the end of the Initial Term or any point thereafter	Contract continues until terminated in accordance with its terms.

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

- 23.3.1. the other party fails to pay any amount due under the Contract on the Due Date for payment and remains in default not less than 10 Working Days after being notified in writing to make such payment;
- 23.3.2. the other party commits a material breach of any other term of the Contract which breach is irremediable or (if remediable) fails to remedy it within a period of 10 Working Days after being notified in writing to do so (this clause 23.3.2 only applies if service credits are not applicable pursuant to the Service Level Agreement); or
- 23.3.3. the other party repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms under the Contract.
- 23.4. Without prejudicing any other right or remedy available to it, TIO may terminate any Contract:
 - 23.4.1. in the event that an Insolvency Event occurs in relation to the Customer; or
 - 23.4.2. the Customer notifies TIO that a school or schools under the remit of the Customer are subject to formal closure proceedings.
- 23.5. Without prejudicing any other right or remedy available to it, TIO may terminate any Contract with immediate effect by giving written notice to the Customer if there is a change of control of the Customer (within the meaning of section 1124 of the Corporation Tax Act 2010).
- 23.6. Without prejudicing any right to terminate which TIO may have, TIO will be entitled to suspend any Services without notice if:
 - 23.6.1. there is a Default on the part of the Customer; or
 - 23.6.2. any of the events set out in clauses 23.2, 23.4 or 23.5 above occur in relation to the Customer.
- 23.7. TIO may rely on the suspension to relieve it from the performance of any of its obligations in each case to the extent the suspension prevents or delays the performance by TIO of any of its obligations and TIO shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from any failure or delay by TIO to perform any of its obligations as set out in this clause 24.
- 23.8. Where TIO acquires the right to terminate or suspend Services under a Contract pursuant to this clause 24, such right shall extend to any other Contracts concluded between the parties incorporating these Conditions, whether prior or subsequent to the Contract under which the right of termination or suspension has arisen.
- 23.9. Following suspension, TIO may impose a reasonable reconnection Charge with respect to Broadband Services at its discretion.
- 23.10. The Customer may terminate the Contract immediately if there is an Obvious Charging Error as detailed in clause 17.4.

24. CONSEQUENCES OF TERMINATION

- 24.1. On termination for any reason:
 - 24.1.1. all rights granted to the Customer under the Contract shall cease;
 - 24.1.2. for the avoidance of doubt, all rights granted to the Customer under any End User Agreement shall continue in accordance with the terms of that agreement;
 - 24.1.3. the Customer shall cease all activities authorised by the Contract; and
 - 24.1.4. the Customer shall immediately pay any sums due to TIO (including sums on a time and materials basis for any work in progress) without set off or deduction.
- 24.2. Subject to TIO's obligations with respect to any other Contract which remains in force, 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.
- 24.3. Provided all sums due to TIO from the Customer have been paid, TIO shall make available to the Customer a copy of all Customer Content in a commonly-readable electronic format for a period of no more than 14 days following termination. After such period, TIO may permanently delete all Customer Content residing on its systems.
- 24.4. The Customer may not freely assign, sub-contract, charge or otherwise deal in any other manner with all or any of its rights or obligations under a Contract without the consent of TIO, such consent not to be unreasonably withheld or delayed.
- 24.5. TIO may freely assign, sub-contract, charge or otherwise deal in any other manner with all or any of its rights or obligations under a Contract without the prior written consent of the Customer.

25. FORCE MAJEURE

- 25.1. Neither party shall be in breach of a Contract nor liable for delay in performing, or failure to perform, any of its obligations under a Contract if such delay or failure results from events, circumstances or causes beyond its reasonable control, including strikes; lock-outs or other industrial disputes (except with respect to that party's own employees); acts of God; war; riot; civil commotion; compliance with any law or governmental order, rule, regulation or direction; accident; epidemic or pandemic; quarantine, fire, flood, or storm ("**Force Majeure Event**").
- 25.2. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for 2 months the party not affected may terminate the relevant Contract (together with any other Contract between the parties) by giving 10 Working Days' written notice to the other party.

26. NON-SOLICITATION

- 26.1. Neither party shall (except with the prior written consent of the other party) directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the other party any person employed or engaged by such other party in the provision of the Services or (in the case of the Customer) in the receipt of the Services at any time during the term of the Contract or for a further period of 12 months after the termination of all Contracts agreed between the parties, other than by means of a national advertising campaign open to all comers and not specifically targeted at any of the staff of the other party.
- 26.2. If either party commits any breach of clause 26.1, the breaching party shall, on demand, pay to the claiming party a sum equal to one year's basic salary or the annual fee that was payable by the claiming party to that employee, worker or independent contractor plus the recruitment costs incurred by the claiming party in replacing such person.

27. NOTICES

- 27.1. Any notice given to a party under or in connection with a Contract shall be in writing and shall be:
- 27.1.1. delivered by hand or by pre-paid first class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- 27.1.2. sent by email using the email addresses set out in the relevant Quote.
- 27.2. Any notice shall be deemed to have been received:
- 27.2.1. if delivered by hand, on signature of a delivery receipt, or at the time the notice is left at the proper address;
- 27.2.2. if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Working Day after posting or at the time recorded by the delivery service; and
- 27.2.3. if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 27.2.3, business hours means Normal Working Hours on Working Days.
- 27.3. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

28. DISPUTE RESOLUTION

- 28.1. If a dispute arises out of or in connection with these Conditions or the performance, validity or enforceability of a Contract (a "**Dispute**") then the parties shall follow the procedure set out in this clause 29:
- 28.1.1. either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (a "**Dispute Notice**"), together with relevant supporting documents. On service of the Dispute Notice, the parties shall attempt in good faith to resolve the Dispute; and
- 28.1.2. if the parties are for any reason unable to resolve the Dispute within 20 Working Days from service of the Dispute Notice, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (an "**ADR Notice**") to the other party to the Dispute, requesting mediation. A copy of the ADR Notice should be sent to CEDR Solve. The mediation will start not later than 10 Working Days after the date of the ADR Notice.

- 28.2. If the Dispute is not resolved within 1 month of the mediator's appointment, then either party may commence court proceedings, but provided that nothing in this clause 28.2 shall prevent either party from either continuing with any means of alternative dispute resolution as may be agreed in writing from time to time, or seeking an injunction or other interim relief at any time if it reasonably believes such action is necessary to prevent irreparable damage.

29. ACADEMISATION AND SCHOOL REBROKERING

- 29.1. In the event that the Customer (where the Customer is a school), or one or more of the schools falling under the Customer's remit becomes subject to either of the following:
- 29.1.1. if not already a school with academy status, becoming an academy whether as a single academy trust or within a multi-academy trust; or
- 29.1.2. becomes subject to the process referred to as "rebrokering" under which proprietorship of the school transfers from one academy trust to another academy trust, then clause 29.2 shall apply.
- 29.2. The benefit and the obligations within a Contract shall transfer on the same date and at the same time as the school's proprietorship changes provided that TIO is released on such terms as TIO acting reasonably propose from any future liability to the predecessor proprietor and the new proprietor confirms adoption of the Contract by the issue of a Quote in the name of the new proprietor expressly referring to the Contract that is to transfer to that party.
- 29.3. If the predecessor proprietor or the new proprietor shall fail to comply with the requirements of clause 29.2 then TIO shall be entitled without prejudice to other rights available to TIO under a Contract to suspend performance of the Contract until such time as there has been due compliance by either or both of those parties as the case may be.

30. GENERAL

30.1. Entire agreement

- 30.1.1. A Contract 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.
- 30.1.2. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement (whether made innocently or negligently) based on any statement in a Contract.

30.2. Third party rights

- 30.2.1. A natural or legal person who is not a party to the Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms. This clause does not alter any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

30.3. Variations

- 30.3.1. Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions to the Contract shall only be binding when agreed in writing and signed by both parties. For the avoidance of doubt, written agreement by email is insufficient.

30.4. Waiver

- 30.4.1. A waiver of any right is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or Default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

30.5. Governing law

- 30.5.1. The construction, validity and performance of each Contract shall be governed by the laws of England and Wales.

30.6. Rights and remedies

30.6.1. No delay or omission by the Supplier in exercising any of its rights or remedies under a Contract or under any Applicable Law on any occasion shall be deemed a waiver of, or bar to, the exercise of such right or remedy or any other right or remedy upon any other occasion.

30.6.2. The rights and remedies provided under these Conditions are exclusive of and in replacement for any rights or remedies provided by law.

30.7. Severance

30.7.1. In the event that any provision of a Contract shall be void or unenforceable by reason of any provision of Applicable Law, it shall be deleted and the remaining provisions hereof shall continue in full force and effect and, if necessary, be so amended as shall be necessary to give effect to the original intent of the Contract so far as possible.

30.7.2. If any provision or part-provision of a Contract is deemed deleted under clause 30.7.1 above, 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.

30.8. No partnership or agency

30.8.1. Nothing in a Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between the parties, nor constitute any party the agent of the other party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

30.9. Jurisdiction

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

SCHEDULE - DEFINITIONS AND INTERPRETATION

1. Interpretation

- 1.1. In these Conditions:
- 1.1.1. **person** includes a natural person, corporate or unincorporated body;
 - 1.1.2. a reference to **TIO** or **Customer** includes its personal representatives, successors and permitted assigns;
 - 1.1.3. a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted and includes any subordinate legislation;
 - 1.1.4. any phrase introduced by the terms **including** or **include** shall be illustrative and shall not limit the sense of the preceding words;
 - 1.1.5. a reference to **writing** or **written** includes emails but excludes faxes;
 - 1.1.6. With respect to the identification of a Customer, the following rules shall apply:
 - 1.1.6.1. Where the Customer identified on the Quote appears on the Register as an academy, the contracting party shall be deemed to be the organisation appearing as the establishment operating the academy in the Register;
 - 1.1.6.2. Where the Customer identified on the Quote appears on the Register as forming part of a foundation, or as being maintained, voluntary aided or voluntary controlled the contracting party shall be deemed to be the local authority acting through the Customer's governing body.
 - 1.1.7. the terms '**personal data**', '**data subject**', '**processor**', '**controller**', '**processing**', '**personal data breach**' and '**supervisory authority**' have the meanings set out in Data Protection Law; and
 - 1.1.8. the following definitions apply:

"Additional Support"	Where the provision of Technical Support Services: <ul style="list-style-type: none"> (i) occurs outside of Maintenance Support Hours; and/or (ii) is due to any of the Excluded Causes.
"ADR Notice"	as defined in clause 28.1.2 of the Conditions.
"Affiliate"	each agent, employee, contractor or sub-contractor of a party or the party's Group.
"Applicable Law"	the laws of England and Wales, together with any other mandatory laws, regulations, regulatory policies, guidelines or industry codes which apply to the performance of each party's obligations under a Contract.
"Authorised Users"	those employees and independent contractors of the Customer who are entitled to log-in and make changes to the Cloud Services under a Contract.
"Back-Up Services"	Services provided in accordance with clause 14.
"Broadband Services"	Services provided in accordance with clause 15.
"Change Request"	a request to change the terms of a Contract, as made in accordance with the change control procedure at clause 17 of the Conditions.
"Charges"	the charges payable by the Customer to TIO, as set out in the Quote.
"Cloud Services"	the services provided pursuant to clause 12 of the Conditions.
"Cloud Software"	the cloud software packages listed in the Quote, together with associated databases in machine-readable object code form only, including any error corrections, updates, upgrades, modifications and enhancements to them made available to the Customer under the Contract.
"Conditions"	the conditions set out in the main body of this document.
"Confidential Information"	information of commercial value, in whatever form or medium, disclosed by a party to the other party, including commercial or technical know-how, technology, information pertaining to business operations and strategies, information pertaining to clients, pricing and marketing information relating to the business of either party, information which is marked as confidential, or information which ought reasonably to be considered confidential in light of the nature of the information and/or circumstances of its disclosure.
"Configuration"	as defined in clause 6.3 of the Conditions.
"Configuration and Installation Services"	the services provided pursuant to the Quote and clause 6 of the Conditions.
"Consultancy Services"	the services provided pursuant to the Quote and clause 11 of the Conditions.

“Contract”	each contract (as defined in clause 1.2 of the Conditions) between the Customer and TIO relating to the supply of Hardware or Services or the provision of Licensed Software.
“Contradictory Terms”	as defined in clause 1.2 of the Conditions.
“Correct Charges”	as defined in clause 17.4 of the Conditions.
“Curriculum Support Services”	those Curriculum Support Services provided pursuant to clause 11 of the Conditions and further detailed in the Quote.
“Customer”	the customer set out in the Quote.
“Customer Content”	any data, documents, text, drawings, diagrams, images or sounds (together with any database made up of any of these), embodied in any medium, that are provided to TIO by or on behalf of the Customer or which TIO is permitted to access in order to perform its obligations pursuant to a Contract.
“Customer Personnel”	employees, directors and agents of the Customer, together with employees, directors and agents of any contractor undertaking activities on behalf of the Customer who are not TIO Personnel.
“Data Protection Assistance Service”	the service provided pursuant to the Quote and clause 16.
“Data Protection Law”	any law, statute, regulation, rule or other binding restriction regarding the protection of individuals with regards to the processing of their personal data in England and Wales, including: <ul style="list-style-type: none"> (i) the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019; (ii) the Data Protection Act 2018; (iii) the Privacy and Electronic Communications (EC Directive) Regulations 2003; and (iv) any code of practice or guidance published by the Information Commissioner’s Office from time to time.
“Default”	any act or omission of a party, or failure by a party to perform a relevant obligation under a Contract.
“Defect”	an error in the Local Software that causes it to fail to operate materially in accordance with its specification/Documentation.
“Delivery Location”	the location set out on the Quote (or if none, the Site).
“Dispute”	as defined in clause 28.1 of the Conditions.
“Dispute Notice”	as defined in clause 28.1.1 of the Conditions.
“Documentation”	any operating manuals, user instruction manuals/guides, technical literature and all other related materials in human-readable or machine-readable forms supplied by TIO as specified in the Quote.
“Due Date”	in respect of a payment under a Contract, the date on which such payment is due pursuant to the Conditions.
“End User Agreement”	in respect of: <ul style="list-style-type: none"> (i) any Open-Source Software, the specific licence under which the relevant Open-Source Software is distributed; or (ii) Back-Up Services, the terms under which the Back-Up Services are provided in accordance with the document located at https://www.redstor.com/end-user-licence-agreement/ (as varied from time to time in accordance with the terms of such end user agreement).
“Excluded Causes”	any of the following: <ul style="list-style-type: none"> (i) misuse, incorrect use of or damage from whatever cause (other than any act or omission by TIO), including failure or fluctuation of electrical power; (ii) failure to maintain the necessary environmental conditions for use; (iii) use in combination with any equipment or software not provided/approved in writing by TIO; (iv) use in combination with equipment or software which suffers a fault; (v) relocation or installation by the Customer or any third party;

	(vi) any act or omission of a third party;
	(vii) any breach of the Customer's obligations under a Contract howsoever arising;
	(viii) any modification not authorised by TIO; or
	(ix) operator error.
"FOIA"	the Freedom of Information Act 2000.
"Force Majeure Event"	as defined in clause 25.1 of the Conditions.
"Good Industry Practice"	the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a company within the relevant industry or business sector.
"Good Working Order"	the relevant item of hardware operates in material accordance with its operating instructions.
"Group"	each and every entity that directly or indirectly controls, is controlled by, or is under common control with a party, for so long as such control exists. In the case of companies and corporations, control means beneficial ownership of more than 50% of the voting stock, shares, interest or equity in an entity; in the case of any other legal entity, "control" and "controlled" shall exist through the ability to directly or indirectly control the management and/or business of the legal entity.
"Hardware"	all items of hardware (including cabling and other physical goods which facilitate the use of the same) provided to the Customer by TIO pursuant to a Contract, as detailed in the relevant Quote.
"Harmful Code"	any software, hardware or other technology, device or means, including any virus, worm, malware or other malicious computer code, the purpose or effect of which is to permit unauthorised access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner: <ul style="list-style-type: none"> (i) the function of any computer, software, firmware, hardware, system or network; or (ii) the security, integrity, confidentiality or use of any data.
"Initial Term"	A period of 1 year, commencing on the Start Date;
"Insolvency Event"	<ul style="list-style-type: none"> (i) the 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 under section 123 of the Insolvency Act 1986 or is deemed either unable to pay its debts or as having no reasonable prospect of so doing within the meaning of section 268 of the Insolvency Act 1986; (ii) the party starts negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for/enters into any arrangement with its creditors; (iii) a petition is filed, a notice is given, a resolution is passed, or an order is made, for/in connection with the winding up of the party; (iv) the party is the subject of a bankruptcy petition or order; (v) a creditor or encumbrancer of the party attaches or takes possession of, or a distress, execution, sequestration or other process is levied or enforced on or sued against, the whole or part of its assets which is not discharged within 14 days; (vi) an application is made to court, or an order is made to appoint an administrator, or notice of intention to appoint an administrator is given or an administrator is appointed over the party; (vii) a floating charge holder over the assets of the party becomes entitled to appoint or has appointed an administrative receiver; (viii) a person becomes entitled to appoint a receiver over the assets of the party or a receiver is appointed over the assets of the party;

	(ix) any event analogous to those mentioned in (i)-(viii) above occurs in another jurisdiction.
“Intellectual Property Rights”	patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use and protect the confidentiality of confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
“Licensed Software”	either: <ul style="list-style-type: none"> (i) the Cloud Software; or (ii) the Local Software.
“Local Software”	standard software programmes owned by TIO (or its licensors) which are licensed directly to the Customer for installation on the Customer’s local network, pursuant to clause 7 of the Conditions.
“Maintenance Services”	any Technical Support Services and any MIS Support Services.
“Maintenance Support Hours”	any time period set out on the Quote (or if none, Normal Working Hours).
“MIS”	those software programs listed as MIS in an Quote and all subsequent amendments and Upgrades to the same made available to the Customer from time to time.
“MIS Support Services”	the services provided pursuant to the Quote and clause 9 of the Conditions.
“Normal Working Hours”	9.00am to 5.30pm UK time, each Working Day.
“Obvious Charging Error”	as defined in clause 17.4 of the Conditions.
“Open-Source Software”	any software licensed under any form of open-source licence meeting the Open-Source Initiative's Open Source Definition (http://www.opensource.org/docs/definition.php) or any libraries or code licensed from time to time under the General Public Licence (as described by the Free Software Foundation and set out at http://www.gnu.org/licenses/gpl.html), or anything similar, included or used in, or in the development of, the Local Software, or with which the Local Software is compiled or to which it is linked.
“Personnel”	either the Customer Personnel or TIO Personnel, as appropriate.
“Provider”	the third-party provider of the Back-Up Services, as detailed in the Quote.
“Quote”	TIO’s written quotation relating to the supply of Hardware or Services or the provision of Licensed Software.
“Register”	the register maintained by the Department for Education and known as the “Get Information about Schools” Database appearing at https://get-information-schools.service.gov.uk ;
“Regulated Activity”	any regulated activities set out in the Safeguarding Vulnerable Groups Act 2006.
“School Term”	The autumn term, spring term or summer term, as indicated on the Customer’s website, the website of the Customer’s governing body, or the website of the relevant local council from time to time;
“Special Terms”	Any special terms agreed by the parties set out in the Quote which expressly modify any of these Conditions;
“Service Level Agreement”	the agreement set out at [here] describing the standard service levels in respect of a Service.
“Service Specification”	the specification for a given Service, as set out (or referred to) in the Quote.
“Services”	any one or more of: <ul style="list-style-type: none"> (i) Back-Up Services; (ii) Broadband Services; (iii) Cloud Services; (iv) Consultancy Services; (v) Configuration and Installation Services;

	(vi) Curriculum Support Services;
	(vii) MIS Support Services;
	(viii) Technical Support Services; and
	(ix) GDPR Services.
“Shared Personal Data”	any personal data included as part of the Customer Content.
“Site”	premises owned, controlled, or occupied by the Customer, the address of which is set out in the relevant Quote.
“Sourcing Issue”	an inability on the part of TIO to source particular materials or resources (including TIO Personnel) on terms similar or identical to those available at the Start Date (including due to exchange rate fluctuations, increases in taxes or duties) or a change in Applicable Law.
“Standard Rates”	TIO’s standard daily rates for the provision of Services, as communicated to the Customer from time to time.
“Start Date”	as defined in clause 1.2 of the Conditions.
“Technical Support Services”	Those Technical Support Services provided pursuant to the Quote and clause 10 of these Conditions.
“Term”	the period described as such in clause 23.1 of the Conditions.
“TIO”	Turn IT On Ltd, a company registered in England and Wales with company no. 049951571 and with registered office at Yew Tree Farm Abingdon Road, Standlake, Witney, Oxfordshire, OX29 7QH.
“TIO Personnel”	TIO’s employees, directors and agents, together with employees, directors and agents of any contractor undertaking activities on behalf of TIO in relation to the performance of its obligations under the applicable Contract.
“Upgrade”	any of: <ul style="list-style-type: none"> (i) a public release of MIS which corrects faults, adds functionality or otherwise amends or upgrades the MIS; or (ii) any new version of the MIS which from time to time is made public, containing such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a significant update.
“Working Day”	a day other than a Saturday, Sunday or public holiday in England.

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