

Dated

2018

1. RM LITERACY LIMITED
- and
2. SCHOOL

MYBB TERMS AND CONDITIONS

BLACKS
SOLICITORS

City Point, 29 King Street, Leeds, LS1 2HL
www.LawBlacks.com
Ref: PKH/RUT414/11

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THIS AGREEMENT is dated

2017

BETWEEN

- (1) **RM LITERACY LIMITED.** incorporated and registered in England and Wales with company number 05660104 whose registered office is at 7 Sandys Row, London E1 7HW (“**RM Literacy**”); and
- (2) [SCHOOL NAME] (“**School**”).

BACKGROUND

- (A) RM Literacy Ltd. has developed the MyBookBlog online platform (the “**Services**”) which it makes available to schools via www.mybookblog.org and the MyBookBlog School Portal. The MyBookBlog School Portal is accessed over the internet and gives secure access to each school’s own private portal. The School has their own unique URL to the MyBookBlog secure sites, which allows them access to specific features depending on the permissions attached to their User Type.
- (B) The School wishes to enter into an agreement with RM Literacy to have access to and use the **Services**.
- (C) RM Literacy has agreed to provide and the School has agreed to take and pay for the **Services** subject to the terms and conditions of this agreement.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this agreement (unless the context requires otherwise).

“Administrator” means a User with the ability to add, edit and delete Teacher accounts but will not have any access to the classes, blogs and Students data

“Authorised Users” means User Type authorised by the School to use the **Services** as further described in clause 4.1

“Business Day” means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

“Blogs” means any work produced by Students via the MyBookBlog sites including reviews, polls and teacher responses, which, for the avoidance of doubt, can only be viewed by the School and are not available within the public domain, except to other schools that have subscribed to the **Services** and only if approved by the teacher.

“Confidential Information” means information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential

Information in clause 13.6 or clause 13.7.

“Development Day”	means a visit by a RM Literacy employee to the School to go through and explain how the Services operate, for a period of up to 7 hours.
“School Data”	means the data (including the Blogs) inputted by the School, Authorised Users, or RM Literacy on the School’s behalf for the purpose of using the Services or facilitating the School’s use of the Services.
“Effective Date”	means the date of this agreement or otherwise as set out at clause 2.1.
“Initial Subscription Term”	means the initial term of this agreement as set out in Clause 2.2.
“MyBookBlog Leader”	means a User with the ability to view, edit and delete Blogs of all User Accounts associated with all User Subscriptions belonging to the School and will also be to view, edit and delete data of all Students in all classes.
“Normal School Hours”	means [8.00 am to 4.00 pm] local UK time, each Business Day.
“Parent”	means a parent, legal guardian or registered carer of a Student, who has been granted access to the Student Portal by the School.
“MyBookBlog School Portal”	means the online secure site by which a Teacher can access the Services.
“Student Portal”	means the online portal by which Students access the Services.
“Student”	means a student of the School who has been granted access to the Student Portal by the School.
“Renewal Period”	means the period described in clause 16.1.
“Services”	means the provision of the MyBookBlog service to the School by RM Literacy Ltd including access to the online MyBookBlog School Portal and Student Portal together with an agreed number of User Subscriptions, as more particularly described in this Agreement and as updated by RM Literacy Ltd. from

time to time.

“Software”	means the online software applications provided by RM Literacy Ltd. as part of the Services.
“Subscription Fees”	means the subscription fees payable by the School to RM Literacy. for the User Subscriptions, as set out in paragraph 1 of Schedule 1.
“Subscription Term”	has the meaning given in clause 16.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).
“Support Services Policy”	means RM Literacy’s policy for providing support in relation to the Services as made available on the Portal.
“Teacher”	means a teacher or teaching assistant employed by the School.
“User”	means anyone who accesses the Portal irrespective of User Type or uses the Services.
“User Account”	means an account belonging to a User.
“User Subscription”	means the user subscription, based on a class of around 30 Students, purchased by the School pursuant to clause 11.1 which entitles Authorised Users to access and use the Services in accordance with this agreement.
“User Type”	means the Administrator, Teacher, MyBookBlog Leader or Student.
“Virus”	means 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) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.
- 1.9 A reference to writing or written includes faxes but not e-mail.
- 1.10 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule to this agreement.

2. FORMATION OF CONTRACT

- 2.1 This agreement will commence on the Effective Date, which will be the day that the School and RM Literacy sign and date the agreement or where no signatures are obtained, on the date that Ruth Miskin Literacy Ltd begins providing the Services to the School.
- 2.2 The Initial Subscription Term is for a period of 12 months starting on the Effective Date inclusive of the set-up of the Services. Each subsequent Renewal Period is for 12 months.
- 2.3 The agreement will continue until terminated by either party in accordance with clause 16.
- 2.4 Where the agreement is terminated in accordance with clause 16.1.1, the School will be entitled to a pro-rate refund based on a 12-month Subscription Term (as opposed to a 13-month Subscription Term).

3. USER SUBSCRIPTIONS

- 3.1 Subject to the School purchasing the User Subscriptions in accordance with clause 5.3 and clause 11.1, the restrictions set out in this clause 2 and the other terms and conditions of this agreement, RM Literacy hereby grants to the School a non-exclusive, non-transferable right, without the right to grant sublicences, to permit the Authorised Users to use the Services during the Subscription Term.

- 3.2 In relation to the Authorised Users, the School undertakes that:
- 3.2.1 the maximum number of Authorised Users that it authorises to access and use the Services shall not exceed the number of accounts and account types per User Subscription (as set out in clause 4.2) it has purchased from time to time;
 - 3.2.2 it will not allow or suffer any User Account to be used by more than one individual Authorised User;
 - 3.2.3 each Authorised User shall keep a secure password for his use of the User Account and the Services, that such password shall be changed no less frequently than yearly and that each Authorised User shall keep his password confidential;
 - 3.2.4 it shall permit RM Literacy to audit the Services in order to establish the name and password of each Authorised User. Such audit may be conducted no more than once per quarter, at RM Literacy 's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the School's normal conduct of business;
 - 3.2.5 if any of the audits referred to in clause 3.2.4 reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to RM Literacy 's other rights, the School shall promptly disable such passwords and RM Literacy shall not issue any new passwords to any such individual; and
 - 3.2.6 if any of the audits referred to in clause 3.2.4 reveal that the School has underpaid Subscription Fees to RM Literacy, then without prejudice to RM Literacy's other rights, the School shall pay to RM Literacy an amount equal to such underpayment as calculated in accordance with the prices set out in paragraph 1 of Schedule 1 within 10 Business Days of the date of the relevant audit.
- 3.3 The School shall not, and shall ensure that no 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; or
 - 3.3.6 is otherwise illegal or causes damage or injury to any person or property,

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

3.4 The School shall not:

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

3.4.1.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software in any form or media or by any means; or

3.4.1.2 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 or the Portal in order to build a product or service which competes with the Services; or

3.4.3 use the Services to provide services to third parties; or

3.4.4 subject to clause 24.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services 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, other than as provided under this clause 2.

3.5 The School shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and, in the event of any such unauthorised access or use, promptly notify RM Literacy.

3.6 The rights provided under this clause 3 are granted to the School only, and shall not be considered granted to any subsidiary or holding company of the School.

4. USER TYPES

4.1 Each User Subscription is split into the following User Types:

4.1.1 Teacher;

4.1.2 Student;

4.1.3 Administrator; and

4.1.4 MyBookBlog Leader.

4.2 Each purchase of a User Subscription grants the School the following number of Authorised Users, all of whom may be granted a User Account:

4.2.1 One Administrator account irrespective of User Subscriptions purchased unless otherwise agreed in writing;

- 4.2.2 One Teacher account per Teacher in the school;
- 4.2.3 One Student account per Student; and
- 4.3 Each Authorised User will be granted their own User Account, the functionality, permissions and abilities of which will depend on their User Type:
 - 4.3.1 MyBookBlog Leader – will have the ability to view, edit and delete Blogs of all User Accounts associated with all User Subscriptions belonging to the School and can also view, edit and delete data of all students in all classes.
 - 4.3.2 Teacher – will have the ability to view, edit, delete and publish Blogs within their User Subscription as well as view, edit and delete data of all Students within their classes;
 - 4.3.3 Student – will have the ability to view, edit and delete their own Blogs and any Blogs within their User Subscription and those that have been published by the Teacher;
 - 4.3.4 Administrator – will have the ability to add, edit and delete teacher accounts and upload student data to create Student User accounts, but will not have any access to the classes, blogs and students data produced whilst using the services.

5. ADDITIONAL USER SUBSCRIPTIONS

- 5.1 Subject to clause 5.2 and clause 5.3, the School may, from time to time during any Subscription Term, purchase additional User Subscriptions or User Accounts in excess of the number set out in paragraph 1 of Schedule 1 and RM Literacy shall grant access to the Services to such additional Authorised Users in accordance with the provisions of this agreement.
- 5.2 If the School wishes to purchase additional User Subscriptions or User Accounts, the School shall notify RM Literacy in writing. RM Literacy shall evaluate such request for additional User Subscriptions/User Accounts and respond to the School with approval or rejection of the request. Where RM Literacy approves the request, RM Literacy shall activate the additional User Subscriptions or User Accounts within five Business Days of its approval of the School's request.
- 5.3 If RM Literacy approves the School's request to purchase additional User Subscriptions/User Accounts, the School shall, within 30 days of the date of RM Literacy 's invoice, pay to RM Literacy the relevant fees for such additional User Subscriptions/User Accounts as set out in paragraph 2 of Schedule 1 and, if such additional User Subscriptions/User Accounts are purchased by the School part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated from the date of activation by RM Literacy for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).

6. SERVICES

- 6.1 RM Literacy shall, during the Subscription Term, provide the Services to the School on and subject to the terms of this agreement.

- 6.2 RM Literacy shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- 6.2.1 planned maintenance carried out during the maintenance window of 2200 to 0200 UK time; and
 - 6.2.2 unscheduled maintenance performed outside Normal School Hours, provided that RM Literacy has used reasonable endeavours to give the School at least six Normal School Hours' notice in advance.
- 6.3 RM Literacy will, as part of the Services, provide the School with RM Literacy's standard customer support services during Normal School Hours in accordance with RM Literacy's Support Services Policy in effect at the time that the Services are provided. RM Literacy may amend the Support Services Policy in its sole and absolute discretion from time to time. The School may purchase enhanced support services separately at RM Literacy's then current rates.
- 6.4 RM Literacy may also provide the School with one Development Day upon commencement of the Initial Subscription Term – if the School subscribes the whole school. Development Days are not included if the School subscribes individual classes. Additional Development Days may be purchased by the School by agreement with RM Literacy.

7. SCHOOL DATA

- 7.1 The School shall own all right, title and interest in and to all of the School Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the School Data.
- 7.2 RM Literacy shall follow its archiving procedures for School Data as set out in its Data Protection Policy, as such document may be amended by RM Literacy in its sole discretion from time to time. In the event of any loss or damage to School Data, the School's sole and exclusive remedy shall be for RM Literacy to use reasonable commercial endeavours to restore the lost or damaged School Data from the latest back-up of such School Data maintained by RM Literacy in accordance with the archiving procedure described in its Data Protection Policy. RM Literacy shall not be responsible for any loss, destruction, alteration or disclosure of School Data caused by any third party (except those third parties sub-contracted by RM Literacy to perform services related to School Data maintenance and back-up).
- 7.3 RM Literacy will not be responsible for restoring data that was deleted by a User in any instance where the User has the agency to do so. RM Literacy will endeavour to warn the User at the point of requesting a delete that the data will not be restored.
- 7.4 RM Literacy shall, in providing the Services, comply with its Privacy Policy relating to the privacy and security of the School Data available on the MyBookBlog website, as such document may be amended from time to time by RM Literacy in its sole discretion.
- 7.5 If RM Literacy processes any personal data on the School's behalf when performing its obligations under this agreement, the parties record their intention that the

School shall be the data controller and RM Literacy shall be a data processor and in any such case:

- 7.5.1 the School shall ensure that the School is entitled to transfer the relevant personal data to RM Literacy, and will be responsible for obtaining the relevant permission from the Parents, so that RM Literacy may lawfully use, process and transfer the personal data in accordance with this agreement on the School's behalf;
- 7.5.2 the School shall seek such permission from the Parents as are necessary to ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;
- 7.5.3 RM Literacy shall process the personal data only in accordance with the terms of this agreement and any lawful instructions reasonably given by the School from time to time; and
- 7.5.4 each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

8. THIRD PARTY PROVIDERS

The School acknowledges that in the event that any of the Services 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. RM Literacy 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 School, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the School and the relevant third party, and not RM Literacy. RM Literacy recommends that the School refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. RM Literacy does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

9. RM LITERACY'S OBLIGATIONS

- 9.1 RM Literacy undertakes that the Services will be performed with reasonable skill and care.
- 9.2 The undertaking at clause 9.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to RM Literacy's instructions, or modification or alteration of the Services by any party other than RM Literacy or RM Literacy's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, RM Literacy will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the School with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the School's sole and exclusive remedy

for any breach of the undertaking set out in clause 9.1. Notwithstanding the foregoing, RM Literacy:

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

9.2.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the School acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

9.3 This agreement shall not prevent RM Literacy 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.

9.4 RM Literacy warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.

10. SCHOOL'S OBLIGATIONS

The School shall:

10.1.1 provide RM Literacy with:

10.1.1.1 all necessary co-operation in relation to this agreement; and

10.1.1.2 all necessary access to such information as may be required by RM Literacy;

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

10.1.2 obtain consent from a Student's Parent before providing them with a User Account or access to the Parent Portal;

10.1.3 comply with all applicable laws and regulations with respect to its activities under this agreement;

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

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

10.1.6 obtain and shall maintain all necessary licences, consents, and permissions necessary for RM Literacy, its contractors and agents to perform their

obligations under this agreement, including without limitation the Services;

- 10.1.7 ensure that no contact details of any Student are made available on any Blogs including any book review;
 - 10.1.8 keep the publication of any person data as defined by the relevant data protection legislation in place from time to time, to an absolute minimum and where necessary, delete any personal information from any Blogs or book reviews;
 - 10.1.9 ensure that any defamatory or potentially defamatory content is removed from any Blogs or book reviews prior to being published, or where such content has already been published, use best endeavours to remove the content as quickly as possible once informed of its existence;
 - 10.1.10 promptly respond to any complaints about the content of any Blogs or book reviews;
 - 10.1.11 ensure that its network and systems comply with the relevant specifications provided by RM Literacy from time to time; and
 - 10.1.12 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to RM Literacy's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the School's network connections or telecommunications links or caused by the internet.
- 10.2 The School shall ensure that all Teachers are aware of their obligations under the agreement. In particular the School will ensure that any Teacher does not publish a book review until they have reviewed it, asked the Student to amend it if necessary and ensured that it complies with the School's obligations under the agreement.

11. CHARGES AND PAYMENT

- 11.1 The School shall pay the Subscription Fees to RM Literacy for the User Subscriptions in accordance with this clause 11 and Schedule 1.
- 11.2 The School shall on the Effective Date provide to RM Literacy with such approved purchase order information acceptable to RM Literacy and any other relevant valid, up-to-date and complete contact and billing details and RM Literacy shall invoice the School:
 - 11.2.1.1 on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
 - 11.2.1.2 subject to clause 16.1, at least 30 days prior to each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period,and the School shall pay each invoice within 30 days after the date of such invoice.

- 11.3 If RM Literacy has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of RM Literacy:
- 11.3.1 RM Literacy may, without liability to the School, disable the School's (and all Authorised Users) password, account and access to all or part of the Services and RM Literacy shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
 - 11.3.2 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 Bank of England from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 11.4 All amounts and fees stated or referred to in this agreement:
- 11.4.1 shall be payable in pounds sterling;
 - 11.4.2 are, except as stated or subject to clause 15.3.2, non-cancellable and non-refundable;
 - 11.4.3 are exclusive of value added tax, which shall be added to RM Literacy's invoice(s) at the appropriate rate.
- 11.5 RM Literacy shall be entitled to increase the Subscription Fees, the fees payable in respect of the additional User Subscriptions/User Accounts purchased pursuant to clause 5.3, the support fees payable pursuant to clause 6.3 at the start of each Renewal Period upon 90 days' prior notice to the School and Schedule 1 shall be deemed to have been amended accordingly.

12. PROPRIETARY RIGHTS

- 12.1 The School acknowledges and agrees that RM Literacy and/or its licensors own all intellectual property rights in the Services. Except as expressly stated herein, this agreement does not grant the School 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.
- 12.2 RM Literacy confirms that it has all the rights in relation to the Services that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

13. CONFIDENTIALITY

- 13.1 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:
- 13.1.1 is or becomes publicly known other than through any act or omission of the receiving party;
 - 13.1.2 was in the other party's lawful possession before the disclosure;

- 13.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
- 13.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence.
- 13.2 Subject to clause 13.4, 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.
- 13.3 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.
- 13.4 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 13.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 13.5 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 13.6 The School acknowledges that details of the Services, and the results of any performance tests of the Services, constitute RM Literacy's Confidential Information.
- 13.7 RM Literacy acknowledges that the School Data is the Confidential Information of the School.
- 13.8 No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 13.9 The above provisions of this clause 13 shall survive termination of this agreement, however arising.

14. INDEMNITY

- 14.1 The School shall defend, indemnify and hold harmless RM Literacy 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 School's use of the Services, provided that:
 - 14.1.1 the School is given prompt notice of any such claim;

- 14.1.2 RM Literacy provides reasonable co-operation to the School in the defence and settlement of such claim, at the School's expense; and
 - 14.1.3 the School is given sole authority to defend or settle the claim.
- 14.2 RM Literacy shall defend the School, its officers, directors and employees against any claim that the Services infringes any [United Kingdom] patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the School for any amounts awarded against the School in judgment or settlement of such claims, provided that:
 - 14.2.1 RM Literacy is given prompt notice of any such claim;
 - 14.2.2 the School provides reasonable co-operation to RM Literacy in the defence and settlement of such claim, at RM Literacy's expense; and
 - 14.2.3 RM Literacy is given sole authority to defend or settle the claim.
- 14.3 In the defence or settlement of any claim, RM Literacy may procure the right for the School 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 [two] Business Days' notice to the School without any additional liability or obligation to pay liquidated damages or other additional costs to the School.
- 14.4 In no event shall RM Literacy, its employees, agents and sub-contractors be liable to the School to the extent that the alleged infringement is based on:
 - 14.4.1 a modification of the Services by anyone other than RM Literacy; or
 - 14.4.2 the School's use of the Services in a manner contrary to the instructions given to the School by RM Literacy; or
 - 14.4.3 the School's use of the Services after notice of the alleged or actual infringement from RM Literacy or any appropriate authority.
- 14.5 The foregoing and clause 15.3.2 state the School's sole and exclusive rights and remedies, and RM Literacy's (including RM Literacy's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

15. LIMITATION OF LIABILITY

- 15.1 Except as expressly and specifically provided in this agreement:
 - 15.1.1 the School assumes sole responsibility for results obtained from the use of the Services by the School or any Authorised Users, and for conclusions drawn from such use. RM Literacy shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to RM Literacy by the School in connection with the Services, or any actions taken by RM Literacy at the School's direction;

- 15.1.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and
- 15.1.3 the Services are provided to the School on an “as is” basis.
- 15.2 Nothing in this agreement excludes the liability of RM Literacy:
 - 15.2.1 for death or personal injury caused by RM Literacy ’s negligence; or
 - 15.2.2 for fraud or fraudulent misrepresentation.
- 15.3 Subject to clause 15.1 and clause 15.2:
 - 15.3.1 RM Literacy shall not be liable whether in tort (including for [negligence or] breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and
 - 15.3.2 RM Literacy ’s total aggregate liability in contract (including in respect of the indemnity at clause 14.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the total Subscription Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.

16. TERM AND TERMINATION

- 16.1 This agreement shall, unless otherwise terminated as provided in this clause 16, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this agreement shall be automatically renewed for successive periods of 12 months (each a “**Renewal Period**”), unless:
 - 16.1.1 the School terminates the agreement at any time within the first 60 days from the Effective Date;
 - 16.1.2 either party notifies the other party of termination, in writing, at least 60 days before the end of the Initial Subscription Term or any Renewal Period, in which case this agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
 - 16.1.3 otherwise terminated in accordance with the provisions of this agreement;and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the Subscription Term.

- 16.2 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:
- 16.2.1 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 14 days after being notified in writing to make such payment;
 - 16.2.2 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 21 days after being notified in writing to do so;
 - 16.2.3 the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
 - 16.2.4 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 ;
 - 16.2.5 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 16.2.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 16.2.7 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
 - 16.2.8 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
 - 16.2.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - 16.2.10 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within [14] days;

- 16.2.11 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 16.2.4 to clause 16.2.10 (inclusive);
 - 16.2.12 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 16.3 On termination of this agreement for any reason:
- 16.3.1 all licences granted under this agreement shall immediately terminate and the School shall immediately cease all use of the Services;
 - 16.3.2 each party shall return and make no further use of any equipment, property, and other items (and all copies of them) belonging to the other party;
 - 16.3.3 RM Literacy may destroy or otherwise dispose of any of the School Data in its possession unless RM Literacy receives, no later than 10 days after the effective date of the termination of this agreement, a written request for the delivery to the School of the then most recent back-up of the School Data. RM Literacy shall use reasonable commercial endeavours to deliver the back-up to the School within 30 days of its receipt of such a written request, provided that the School 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 School shall pay all reasonable expenses incurred by RM Literacy in returning or disposing of School Data; and
 - 16.3.4 any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

17. FORCE MAJEURE

RM Literacy shall have no liability to the School, the Students or the Parents 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 RM Literacy 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 School is notified of such an event and its expected duration.

18. CONFLICT

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

19. VARIATION

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

20. WAIVER

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

21. RIGHTS AND REMEDIES

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

22. SEVERANCE

22.1 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.

22.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

23. ENTIRE AGREEMENT

23.1 This agreement, together with any documents expressly referred to in, constitute 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.

23.2 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.

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

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

24. ASSIGNMENT

24.1 The School shall not, without the prior written consent of RM Literacy, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

24.2 RM Literacy 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.

25. 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).

26. 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.

27. NOTICES

27.1 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 or by email to the other party at its address set out in this agreement, or such other address or email address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in this agreement.

27.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9.00 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender). A notice sent by email shall be deemed to have been received 24 hours from receipt of confirmation of delivery.

28. 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.

29. JURISDICTION

Each party irrevocably agrees that the courts of England 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).

THIS AGREEMENT has been entered into on the date stated at the beginning of it.

SCHEDULE 1

SUBSCRIPTION FEES

1. SUBSCRIPTION FEES

The Subscription Fees shall amount to a total of £[AMOUNT], based on the following number of User Accounts per User Subscription at £[AMOUNT] per User Subscription:

- 1.1 One Teacher account per Teacher in the school;
- 1.2 One Student account per Student for each User Subscription;

2. ADDITIONAL USER SUBSCRIPTION/USER ACCOUNT FEES

Additional User Subscriptions or User Accounts (as the case may be purchased by the School in accordance with clause 4 at:

2.1.1 £120 per User Subscription.

2.1.2 £5 per User Account.

3. SUPPORT FEES

RM Literacy 's standard and enhanced support fees are set out below:

- 3.1 £500 per Development Day
- 3.2 £250 per half Development Day

SIGNED by [NAME OF DIRECTOR])
for an on behalf of)
RM LITERACY LIMITED

.....
Director

SIGNED by [NAME])
for an on behalf of)
[SCHOOL NAME]

.....