



# Software as a Service (SaaS) Subscription Agreement



Dated:

Between **(1) Histon House Ltd trading as 'ScholarPack'**

and **(2) [CUSTOMER]**

THIS AGREEMENT is dated \_\_\_\_\_

## Parties

- (1) **Supplier:** Histon House Limited incorporated and registered in England and Wales with company number 07319617 whose registered office is at 1st Floor Linen Court, 10 East Road, London, N1 6AD (**ScholarPack**)
- (2) **Customer:** The customer whose details are set out in the Quote

## Recitals

- (A) ScholarPack has developed certain software applications and platforms designed to provide a comprehensive data management system for schools which it makes available to subscribers via the internet on a subscription basis.
- (B) The Customer wishes to use ScholarPack's service in its educational operations.
- (C) ScholarPack has agreed to provide and the Customer has agreed to take and pay for ScholarPack's service subject to the terms and conditions of this Agreement.

## It is Hereby Agreed

### 1. Interpretation

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

**Access Rights:** the level of access an Authorised User or Third Party has in respect of the Service, including without limitation what Content the Authorised User or Third Party can access and/or edit, whether the Authorised User or Third Party is authorised to generate Content and if so, the nature and scope of such Content;

**API:** means an application programming interface made available by ScholarPack to the Customer, to enable the Customer to interface directly and to allow access to the Customer's information held in the Service or to any Third Party Integration which the Customer uses and wishes to interface with via the Service;

**Authorised Users:** those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation, as further described in clause 2.

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

**Confidential Information:** information that would be regarded as confidential by a reasonable business person and is either clearly labelled or identified as such or identified as Confidential Information in clause 12.6 or clause 12.7.

**Content:** any content or material, whether of an audio or visual nature, which is accessible to an Authorised User or Third Party via the Service, which may include but is not limited to words, pictures, blogs, comments, reports, case studies, lesson plans, homework, programmes and podcasts;

**Contract Year:** each 12 month period during the Subscription Term.

**Customer Data:** the data inputted by the Authorised Users or ScholarPack on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

**Data Protection Legislation:** the UK Data Protection Legislation and any other applicable legislation relating to personal data in force from time to time (including, without limitation, the privacy of electronic communications) and the guidance and codes of practice with which each party must comply by law that are issued by the relevant data protection regulatory authority and applicable to a party.

**Documentation:** the document (if any) made available to the Customer by ScholarPack online via such web address notified by ScholarPack to the Customer for this purpose and which sets out a description of the Services and the user instructions for the Services.

**Effective Date:** the date of this Agreement.

**Group:** in relation to any company, any body corporate which is from time to time a holding company of that company, a subsidiary of that company or a subsidiary of a holding company of that company ("holding company" and "subsidiary" having the meanings attributed to them by s.1159 Companies Act 2006) and "Group" shall be construed accordingly;

**Initial Subscription Term:** the initial term of this Agreement as set out in Schedule 2.

**Intellectual Property Rights:** rights in patents, designs, copyright, moral rights, database rights, trade marks, trade and business names, rights to sue for passing off, rights in the nature of unfair competition rights, trade secrets, confidentiality and other proprietary rights including rights to know-how and other technical information (in each case whether registered or unregistered and including applications to register any of the foregoing) and all rights in the nature of any of the foregoing anywhere in the world.

**Invoice Date:** the date set out in Schedule 2.

**Normal Business Hours:** 8.30 am to 4.30 pm local UK time, each Business Day.

**Quote:** the most recent quote for supply of Services which is provided by ScholarPack to the Customer.

**Renewal Period:** the period described in clause 15.1.

**RPI:** the Retail Prices Index or any official index replacing it.

**Services:** the subscription services provided by ScholarPack to the Customer under this Agreement via the website notified to the Customer by ScholarPack for this purpose from time to time, as may be more particularly described in the Documentation.

**Software:** the online software applications provided by ScholarPack as part of the Services.

**Subscription Fees:** the subscription fees payable by the Customer to ScholarPack for the User Subscriptions, as set out in paragraph 1 of Schedule 1 as the same may be updated in accordance with clauses 10.5 and 10.6.

**Subscription Term:** has the meaning given in clause 15.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

**Support Services:** the support services for the Software which may be offered from time to time by ScholarPack to the Customer as further described in clause 4.

**Third Party:** any organisation that offers Third Party Integrations, and is granted various Access Rights, or any other third party supplier to which the Customer grants Access Rights;

**Third Party Integrations:** the interfacing of the Service with a Third Party application or similar via an API (or manually) requested by the Institution;

**UK Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK which at the time of writing includes the retained General Data Protection Regulation (EU) 2016/679 (UK GDPR), the UK Data Protection Act 2018 and the Privacy and Electronic Communications Regulations 2003 as each may be superseded or replaced from time to time.

**User Subscriptions:** the user subscriptions purchased by the Customer which entitle Authorised Users to access and use the Services and the Documentation in accordance with this Agreement.

**Virus:** any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) 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 writing or written includes email subject to clause 26 (Notices).

- 1.8 References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement.
- 1.9 The definitions in the Data Processing Schedule (Schedule 3) shall apply to this Agreement mutatis mutandis and in the event of any inconsistency between the two definitions, the terms of the Schedule shall prevail.
- 1.10 Any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

## 2. Licence to Use

- 2.1 Subject to the terms and conditions of this Agreement, ScholarPack hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sub-licences, to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's internal operations.
- 2.2 The Customer shall authorise its Authorised Users to use the Services and the Documentation only on the condition that (and the Customer must ensure that):
- (a) each Authorised User agrees that their login details must not be used by anyone else;
  - (b) each Authorised User agrees that access to or use of the Services and/or Documentation by any person other than the Authorised Users is not permitted;
  - (c) each Authorised User agrees to keep a secure and confidential password for their use of the Services and Documentation which meets ScholarPack's password requirements from time to time as notified to the Customer, the current requirements for which are set out in Schedule 3;
- 2.3 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:
- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
  - (b) facilitates illegal activity;
  - (c) depicts sexually explicit images;
  - (d) promotes unlawful violence;
  - (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
  - (f) is otherwise illegal or causes damage or injury to any person or property
- and ScholarPack reserves the right, without liability or prejudice to its other rights, to disable the Customer's access to any material that breaches the provisions of this clause.
- 2.4 The Customer shall not:

- (a) 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:
    - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
    - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
  - (b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
  - (c) use the Services and/or Documentation to provide services to third parties; or
  - (d) subject to clause 23.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
  - (e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2.
- 2.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify ScholarPack.
- 2.6 The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company or other related entities of the Customer.
- 2.7 The Customer understands and agrees that:
- (a) in the event of the Customer breaching the terms of this Agreement or where ScholarPack suspects the Customer has breached the terms of this Agreement, ScholarPack shall be entitled to disable the Customer's access and use of the Services. For the avoidance of doubt, in this event, ScholarPack shall have the right to disable all or some of the Authorised Users' access and use of the Services; and
  - (b) at any time upon ScholarPack giving the Customer reasonable prior notice, ScholarPack shall be entitled to disable any Authorised User(s) access and use of the Services in whole or in part.

### 3. ScholarPack's Usage and Access Rights

- 3.1 The parties acknowledge that ScholarPack requires access to the Software and the Customer Data and to use the same as described in Schedule 3 and in its privacy policy from time to time available at <https://support.scholarpack.com/hc/en-gb/articles/4415713313425-ScholarPack-Privacy-Policy-Jan-2022-> as the same may be updated from time to time and in addition to (a) configure, maintain and update the Software; (b) to verify the number

of students for billing purposes; (c) for security purposes; or (d) as may be otherwise required by law or to provide the Customer with the Services and the Customer shall provide a list of Authorised Users and a list of student numbers (but not names) or such other information as ScholarPack may reasonably and legally require promptly upon ScholarPack's written request if required for these purposes. Subject to clause 3.4, ScholarPack shall not process the Customer Data for any other purpose than set out in this agreement without the express permission of the Customer.

- 3.2 The Customer shall further permit ScholarPack or ScholarPack's designated auditor to audit the Customer's use of the Services to audit compliance with this Agreement. Each such audit may be conducted no more than once per quarter, at ScholarPack's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business. If any of such audits reveal that the Customer has underpaid Subscription Fees to ScholarPack then without prejudice to ScholarPack's other rights, the Customer shall pay to ScholarPack an amount equal to such underpayment or ScholarPack's loss of Subscription Fees revenue as calculated in accordance with the prices set out in Schedule 1 within 10 Business Days of being notified of the underpayment.
- 3.3 If ScholarPack becomes aware of any security breach then, without prejudice to ScholarPack's other rights, ScholarPack may disable the Customer's access to the Services and/or require the Customer to disable access to the Services until such security breach has been rectified to ScholarPack's reasonable satisfaction.
- 3.4 The Customer grants ScholarPack a licence to create databases from, copy and store the Personal Customer Data solely to perform the Services and for the purposes set out in Schedule 3, for the Subscription Term and any back up period post termination set out in Schedule 3.

#### 4. Support

- 4.1 Subject to Clause 4.2, ScholarPack shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this Agreement.
- 4.2 ScholarPack shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- (a) **planned maintenance** carried out outside Normal Business Hours; and
  - (b) **unscheduled maintenance** (performed outside Normal Business Hours where reasonably possible).
- 4.3 ScholarPack will, as part of the Services and in consideration of the Customer paying the Subscription Fee, provide the Customer with ScholarPack's standard customer support services during Normal Business Hours.

#### 5. Training

- 5.1 Initial Authorised User training shall be provided by ScholarPack in accordance with the training terms and fees set out in the Quote (the **Initial Training**). The cost of the Initial Training is additional to the Subscription Fees and is non-refundable. Before the Initial Training is delivered, ScholarPack shall be entitled to restrict the Customer's use of the Software to the extent it deems appropriate (acting reasonably) but without any reduction in the Subscription Fees. The Initial Training

must be arranged by the Customer and completed within 12 months of the date of the Quote.

- 5.2 Subsequent training days shall be chargeable at ScholarPack's prevailing rates as set out in the Documentation (as such may be amended from time to time). Additional training purchased by the Customer must be completed within 12 months from purchase.

## 6. School data

### 6.1 Data Ownership

The Customer shall own all right, title and interest in and to all of the Customer Data that is inputted by its Authorised Users (excluding any Intellectual Property Rights in the Software itself) unless expressly licensed to ScholarPack and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.

### 6.2 Data Protection Legislation

The provisions of Schedule 3 comprise a data protection addendum which shall apply and which sets out the parties' specific rights and responsibilities to protect the Personal Customer Data.

## 7. Third party providers

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

## 8. ScholarPack's Obligations

- 8.1 ScholarPack undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 8.2 The undertaking at clause 8.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to ScholarPack's instructions, or modification or alteration of the Services by any party other than ScholarPack or ScholarPack's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, ScholarPack will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance ('workaround'). Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 8.1.
- 8.3 Notwithstanding the foregoing, ScholarPack:



- (a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
- (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

## 9. Customer's obligations

### 9.1 The Customer shall:

- (a) provide ScholarPack with all necessary co-operation in relation to this Agreement including but not limited to positively promoting the Services to users;
- (b) without affecting its other obligations under this Agreement, comply with all applicable laws and regulations with respect to its activities under this Agreement;
- (c) carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner including without limitation, notifying ScholarPack of all bug reports and feedback in a timely manner and using reasonable skill and care to ensure they are accurate and complete. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, ScholarPack may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this Agreement and all terms of use applicable to the Service and the Customer shall be responsible for any Authorised User's breach of this Agreement and the Customer further agrees that ScholarPack shall be entitled to require the Customer to investigate any material or repeated breach of such terms and conditions by an Authorised User;
- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for Customer to use the Service and any Third Party Integrations and for ScholarPack, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services;
- (f) ensure that its network and systems comply with the relevant specifications provided by ScholarPack from time to time including ensuring that all electronic communications between the Customer's Authorised Users and ScholarPack are protected by industry standard protection against unauthorised access to or manipulation of data; and
- (g) be, to the extent permitted by law and except as otherwise expressly provided in this Agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from

its systems to ScholarPack's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

9.2 With regards to Third Party Integrations, the Customer understands and agrees that:

- (a) ScholarPack may provide the Customer with APIs in order to permit the Customer to utilise the services of a Third Party, where the Customer is permitted to do so and where the Customer wishes to allow Third Party Integration with the Service.
- (b) ScholarPack may suspend, disable or withdraw access to these APIs at any time, without any liability to the Customer or any Third Party.
- (c) The Customer acknowledges and agrees that APIs:
  - (i) are provided free of charge unless otherwise agreed in writing by both parties;
  - (ii) are provided "as-is", and without any warranty of any kind; and
  - (iii) may not be used for the purpose of developing or interfacing with any product or software which substantially replicates the functionality of any part of the Services, or which competes with any of the Services or products of ScholarPack or its Group.
- (d) The Customer acknowledges that the only warranties provided in relation to the Third Party Integration or the supply thereof are those contained in the licence from the Third Party of the same. No warranties will be provided by ScholarPack in relation to any Third Party Integrations.
- (e) ScholarPack shall be solely responsible for approving and/or rejecting any connection requests for Third Party Integrations and administering, managing and monitoring a Third Party's Access Rights, which includes the ability of a Third Party to read (access data), write (create data), update (edit data) and/or delete Content from time to time;
- (f) ScholarPack shall not be responsible, and excludes liability (whether directly or indirectly arising), for:
  - (i) a Customer providing incorrect Access Rights to a Third Party;
  - (ii) vetting any Third Party who wishes to implement a Third Party Integration for the Customer;
  - (iii) any action or inaction, acts or omissions, of a Third Party; and/or
  - (iv) the Customer's use of the API /integration with the Service;
  - (v) any maintenance or remediation of faults with any Third Party Integration;
  - (vi) any compliance with UK Data Protection Legislation obligations which arise from such Third Party Integration.
- (g) The Customer may only use and/or access the API in accordance with this Agreement and the documents referred to in it and shall fully indemnify ScholarPack and hold ScholarPack harmless against any costs, damages, expenses or losses that ScholarPack suffers which arise out of any misuse of the API by the Customer or any Third Party, Authorised User or other third party which has been authorised by the Customer to use or access the API.
- (h) If implementation of any Third Party Integration to the Service has a detrimental effect on the Service, including but not limited to, causing loss of data, loss of use or any reduction in the Customer's ability to use the

Services, ScholarPack shall not be liable whatsoever, under any circumstances, for any such losses (whether directly or indirectly arising).

- (i) ScholarPack reserves the right to decline any request by the Customer to use a Third Party Integration for any reason (acting reasonably) and to withdraw any API without liability to the Customer at any time where ScholarPack considers this is necessary.
- (j) It is the Customer's responsibility to obtain all necessary licences required for any API and to provide any fair processing notices to individuals that are required for such API and Customer hereby indemnifies the Customer for any costs, damages, expenses or losses that arise as a result of any breach of this clause.
- (k) Any Third Party providing a Third Party Integration will be a data processor of the Customer.

## 10. Charges and payment

10.1 The Customer shall promptly, and within five days of ScholarPack's request, provide to ScholarPack valid, up-to-date and complete purchase order information acceptable to ScholarPack.

10.2 ScholarPack shall submit its invoices to the Customer:

- (a) within five days of the Invoice Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
- (b) subject to this Agreement being earlier terminated pursuant to clause 15.1, at least 30 days prior to each anniversary of the Invoice Date for the Subscription Fees payable in respect of the next Renewal Period;

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

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

- (a) ScholarPack may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and ScholarPack shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
- (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of ScholarPack's bankers in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

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

- (a) shall be payable in pounds sterling;
- (b) are non-cancellable and non-refundable;
- (c) are exclusive of value added tax, which shall be added to ScholarPack's invoice(s) at the appropriate rate;

- (d) shall be paid in full without any withholding or set off and the Customer shall be responsible for any VAT or other taxes in respect of them which shall be added to the relevant invoice.
- 10.5 ScholarPack shall be entitled, upon 90 days' prior notice to the Customer, to increase the Subscription Fees or any other recurrent fees payable under this Agreement once during every Contract Year in line with the percentage increase in the Retail Prices Index (or any official index replacing it) in the preceding 12-month period and Schedule 1 shall be deemed to have been amended accordingly.
- 10.6 The Subscription Fees for any Renewal Period shall be ScholarPack's prevailing rates at the time of the renewal.

## 11. Intellectual Property Rights

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

## 12. Confidentiality

- 12.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:
  - (a) is or becomes publicly known other than through any act or omission of the receiving party;
  - (b) was in the other party's lawful possession before the disclosure;
  - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
  - (d) is independently developed by the receiving party, which independent development can be shown by written evidence.
- 12.2 Subject to clause 12.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.
- 12.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 12.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as

much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 12.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

- 12.5 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 12.6 The Customer acknowledges that without limitation, details of the Services, the results of any performance tests of the Services, the terms of this Agreement, any know how or trade secret of ScholarPack or its Group, the identity of any customer or supplier of ScholarPack or its Group, any product development plans of ScholarPack or its Group, any information relating to the finances or existing or potential investors of ScholarPack or its Group constitute ScholarPack's Confidential Information.
- 12.7 ScholarPack acknowledges that the Customer Data is the Confidential Information of the Customer.
- 12.8 No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 12.9 The above provisions of this clause 12 shall survive termination of this Agreement, however arising.

### 13. Indemnity

- 13.1 The Customer shall defend, indemnify and hold harmless ScholarPack against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation, provided that:
  - (a) the Customer is given prompt notice of any such claim;
  - (b) ScholarPack provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
  - (c) the Customer is given sole authority to defend or settle the claim.

### 14. Limitation of Liability

- 14.1 Except as expressly and specifically provided in this Agreement:
  - (a) the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. ScholarPack shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to ScholarPack by the Customer in connection with the Services, or any actions taken by ScholarPack at the Customer's direction;

- (b) 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
  - (c) the Services and the Documentation are provided to the Customer on an "as is" basis.
- 14.2 Nothing in this Agreement excludes the liability of ScholarPack:
  - (a) for death or personal injury caused by ScholarPack's negligence; or
  - (b) for fraud or fraudulent misrepresentation.
- 14.3 Subject to clause 14.1 and clause 14.2:
  - (a) ScholarPack 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
  - (b) ScholarPack's total aggregate liability in contract, 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.

## 15. Term and termination

- 15.1 This Agreement shall, unless otherwise terminated as provided in this clause 15, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this Agreement shall be automatically renewed for successive 12 month periods (each a Renewal Period), unless:
  - (a) either party notifies the other party of termination, in writing, at least 90 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
  - (b) 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.
- 15.2 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:
  - (a) 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 30 days after being notified in writing to make such payment;
  - (b) the other party commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
  - (c) 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;

- (d) 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, as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
  - (e) 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;
  - (f) 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;
  - (g) 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;
  - (h) 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;
  - (i) 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;
  - (j) 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;
  - (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.2.4 to clause 15.2.10 (inclusive);
  - (l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 15.3 ScholarPack may terminate this Agreement on written notice to the Customer if ScholarPack's relationship with any of its third party suppliers which provide it with software, hosting or other technology or related services ("Third Party Supplier") terminates or expires for any reason (or if the Third Party Supplier requires ScholarPack to change the way it provides the Service or its use of technology).
- 15.4 On termination of this Agreement for any reason (unless the agreement is being terminated pursuant to clause 15.1.1 and the parties have expressly agreed in writing separate terms for transitional services during a planned migration):
- (a) all licences granted to the Customer under this Agreement shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Documentation;



- (b) 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 save for any retention of data that is permitted pursuant to Schedule 3;
- (c) 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.

## 16. Force majeure

ScholarPack shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of ScholarPack or any other party), failure of a utility service or transport or internet or telecommunications network, act of God, epidemic, pandemic, 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, and ScholarPack shall ensure that the Customer is notified of such an event as soon as reasonably possible and its expected duration.

## 17. Order of Precedence

If there is conflict between them, the following order of precedence shall be followed (highest priority first): 1. Any special terms which seek to vary or add to this Agreement and which are both countersigned by both parties and appended to this Agreement. 2. Quote. 3. The Schedules to this Agreement. 4. The main body of this Agreement. 4. Any user terms imposed by ScholarPack on all users of the Service.

## 18. Variations and Authority

No variation of this Agreement shall be effective unless it is (i) in writing and signed by the parties' authorised representatives (which in ScholarPack's case must be a director of ScholarPack) or (ii) confirmed by the Customer in-product by a Customer representative with authority to vary these terms (which shall be deemed to include the Customer's headteacher or any person nominated by them for this purpose).

## 19. Waiver

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

## 20. Rights and Remedies

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



## 21. Severance

- 21.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.
- 21.2 If any provision or part-provision of this Agreement is deemed deleted under clause 21.1 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.

## 22. Entire agreement

- 22.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter unless expressly agreed in writing to the contrary.
- 22.2 Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.
- 22.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
- 22.4 Nothing in this clause shall limit or exclude any liability for fraud.

## 23. Assignment

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

## 24. No partnership or agency

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

## 25. Third party rights

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

## 26. Notices

- 26.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this Agreement, or such other address as may have been notified by that party for such purposes, in each case addressed for the attention of the Legal Department. Legal notices may not be validly served by email but this shall not preclude other matters requiring agreement in writing to be agreed over email.
- 26.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

## 27. Counterparts

This Agreement may be executed in any number of counterparts, each of which is an original and which, when executed and delivered, shall be an original and which together shall have the same effect as if each party had executed and delivered the same document. Transmission of the executed signature page of a counterpart of this Agreement by: e-mail (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Agreement.

## 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 and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

## Schedule 1 - Fees

### 1. Subscription Fees

- 1.1 The Subscription Fees shall be calculated on the basis set out in the Quote and based on the number of active students recorded in the census for the students completed in the October preceding the Effective Date.
- 1.2 These fees shall be subject to any inflationary increases from time to time as permitted under this Agreement.
- 1.3 Additional fees may be charged for services outside the scope of ScholarPack's standard subscription including but not limited to ScholarPack's additional fees for SMS messaging packages. These will be detailed in the Quote and are subject to ScholarPack's fair usage conditions attaching to such SMS packages which are available on its website.

### 2. Training Fees

- 2.1 Initial Training fees are as further detailed in the Quote. Additional training to be purchased separately if required and charged at ScholarPack's prevailing rates from time to time.

### 3. Support Fees

- 3.1 Standard support for the Software during Normal Business Hours is included in the Subscription Fees. If the Customer's requests for support become excessive as reasonably determined by ScholarPack then ScholarPack reserves the right to require the Customer to take out additional training which shall be chargeable at ScholarPack's prevailing rates at that time.

## Schedule 2 - Subscription Term and Invoice Date

1. **Initial Subscription Term:** The number of months from the Invoice Date
2. **Invoice Date:** The invoice date set out in the Quote

## Schedule 3 - Data Processing

### Part 1

#### 1. Definitions and Interpretation

- 1.1 The following definitions and rules of interpretation apply in this Schedule in addition to those contained in the main body of the Software as a Service Subscription Agreement and where used shall also apply to the main body of the agreement:

**Appropriate Safeguards:** means such legally enforceable mechanism(s) for transfers of Personal Customer Data as may be permitted under Data Protection Legislation from time to time.

**Data Controller:** has the meaning given to it in the UK Data Protection Legislation;

**Data Processor:** has the meaning given to it in the UK Data Protection Legislation;

**Personal Customer Data:** All Personal Data contained in the Customer Data;

**Personal Data:** means any information relating to an identifiable person who can be directly or indirectly identified in particular by reference to that information.

**Personal Data Breach:** a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Customer Data transmitted, stored or otherwise processed.

**Processing, processes and process:** any activity that involves the use of Personal Customer Data or as the UK Data Protection Legislation may otherwise define processing, processes or process. Processing includes obtaining, recording or holding the Personal Customer Data or carrying out any operations on the Personal Customer Data, including organisation, adaptation or alteration, retrieval, consultation or use, disclosure, combination, erasure or destruction.

**Third Party Processor:** the various hosting providers, cloud providers, SMS providers and email providers as engaged by ScholarPack from time to time in relation to the Services.

- 1.2 This Schedule is subject to the terms of the Software as a Service Subscription Agreement and is incorporated into the same and shall also take immediate effect on the Effective Date.
- 1.3 In the case of any contradiction, inconsistency or other discrepancy between the terms of this Schedule and the terms of the main body of the Software as a Service Subscription Agreement, the terms of this Schedule will prevail.

#### 2. Compliance with Law and Roles and Responsibilities

- 2.1 The parties acknowledge that for the purposes of the UK Data Protection Legislation, the Customer is the Data Controller and ScholarPack is the Data Processor (where Data Controller and Data Processor have the meanings as defined in the UK Data Protection Legislation).

2.2 ScholarPack shall process Personal Customer Data in compliance with: (a) the obligations of Data Processors under Data Protection Legislation in respect of the performance of its obligations under this Agreement and (b) the terms of this Agreement. The purposes for which ScholarPack processes the Personal Customer Data are as notified by the Customer to ScholarPack from time to time and shall include those purposes set out in Part 2 of this Schedule.

2.3 The Customer shall process Personal Customer Data in compliance with: (a) the obligations of Data Controllers under Data Protection Legislation in respect of the performance of its obligations under this Agreement and (b) the terms of this Agreement.

2.4 The Customer warrants, represents and undertakes that:

2.4.1. without prejudice to the generality of clause 2.3, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful processing of the Personal Customer Data by ScholarPack for the duration and purposes of the Software as a Service Subscription Agreement;

2.4.2. without prejudice to the generality of clause 2.3, the Customer shall ensure that all Personal Customer Data processed by the Customer for use in connection with the Services prior to such data being provided to or accessed by ScholarPack for the performance of the Services under this Agreement, shall comply in all respects, including in terms of its collection, storage and processing with Data Protection Legislation. For the avoidance of doubt, it shall be the Customer's responsibility to (i) provide any fair processing information notices; (ii) to ensure it has a legal basis for the processing of the Personal Customer Data by the Customer and ScholarPack and any appointed sub processors; and (iii) to ensure that any migration of data to ScholarPack from other systems is done in accordance with Data Protection Legislation;

2.4.3. all instructions it gives to ScholarPack in respect of Personal Customer Data shall at all times be in accordance with Data Protection Legislation;

2.4.4. it is satisfied that ScholarPack's security measures which meet ISO27001 ISMS certification are suitable for the purposes for which the Customer proposes to use the Services and engage ScholarPack to process the Personal Customer Data

and the Customer hereby indemnifies ScholarPack for all costs, damages, expenses or losses that ScholarPack suffers which arise out Customer's breach of clause 2.4 above.

2.5 This clause 2 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

### 3. Instructions

3.1 ScholarPack shall only process the Personal Customer Data on the documented written instructions of the Customer, some of which are set out in the particulars in Part 2 of this Schedule or as otherwise required to do so by Data Protection Legislation provided that such instructions do not go beyond the scope of Services

set out in the Services Agreement or what is reasonably required by Data Protection Legislation.

- 3.2 Where ScholarPack is relying on Applicable Laws as the basis for processing Personal Customer Data, ScholarPack shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit ScholarPack from so notifying the Customer.

#### 4. Technical and Organisational Measures

- 4.1 Subject to clause 2.4.4, each party shall ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Customer Data and against accidental loss or destruction of, or damage to, Personal Customer Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Customer Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Customer Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).
- 4.2 Each party shall ensure that all personnel who have access to and/or process Personal Customer Data are contractually obliged to keep the Personal Customer Data confidential and are aware of each party's duties under Data Protection Legislation and the Software as a Service Subscription Agreement.
- 4.3 The Customer shall comply with ScholarPack's password policy from time to time which is currently:

Passwords must be:

- Minimum 7 characters in length'
- Assessed as having at least a 60% strength score;
- Comprised of at least three out of four of the following: upper and lower case letters, symbols and numbers;
- Changed at least every 90 days.

#### 5. Overseas Transfers

- 5.1 Without prejudice to the generality of clause 2, ScholarPack shall, in relation to any Personal Customer Data processed in connection with the performance by ScholarPack of its obligations under this Agreement:

5.1.1. not transfer any Personal Customer Data outside United Kingdom unless the following conditions are fulfilled:

5.1.1.1. there are Appropriate Safeguards in relation to the transfer;

5.1.1.2. the data subject has enforceable rights and effective legal remedies;

5.1.1.3. ScholarPack complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Customer Data that is transferred.

5.2 The Customer agrees that ScholarPack may transfer Personal Customer Data to its overseas sub processors detailed in clause 9 (an **International Recipient**), provided all such transfers (and any onward transfer) shall (to the extent required under Data Protection Legislation) be effected by way of Appropriate Safeguards and in accordance with Data Protection Legislation. The provisions of this Agreement shall constitute the Customer's instructions with respect to transfers in accordance with clause 3.

## 6. Records and Audits

6.1 ScholarPack shall maintain all records required by Data Protection Legislation and if required, make them available to the Customer and its auditors to demonstrate compliance with this schedule provided that:

6.1.1. ScholarPack is given reasonable prior notice of such information request, audit and/or inspection being required by the Customer;

6.1.2. all information obtained or generated by the Customer or its auditor(s) in connection with such information requests, inspections and audits is kept strictly confidential (save for disclosure required by Applicable Law);

6.1.3. such audit or inspection is undertaken during normal business hours, with minimal disruption to ScholarPack's business, the sub processors' business and the business of other customers of ScholarPack; and

6.1.4. paying ScholarPack's reasonable time and costs for assisting with the provision of information and allowing for and contributing to inspections and audits.

## 7. Assistance

ScholarPack shall assist the Customer in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators provided that the Customer shall pay ScholarPack's charges and internal costs for recording and referring the data subject requests in accordance with this clause. ScholarPack warrants that it has in place procedures to promptly and effectively deal with any data subject requests for access, portability, rectification or erasure, queries or complaints made by data subjects in relation to this agreement (or the processing undertaken pursuant to it).

## 8. Breaches

Each party shall notify the other party without undue delay on becoming aware of a Personal Data Breach affecting the Personal Customer Data and shall comply with its obligations as required by Data Protection Legislation. ScholarPack's data breach policy is available upon request.

## 9. Sub Processors



ScholarPack shall not engage any sub processor to carry out any processing activities in respect of the Personal Customer Data without the Customer's authorisation (such authorisation not to be unreasonably withheld, conditioned or delayed) provided that the Customer authorises the appointment of any of the Third Party Processors and sub processors referred to on its website at <https://support.scholarpack.com/hc/en-gb/articles/360003850531-Authorised-Subprocessors> and provided that all such sub processing may only be carried out under a written agreement incorporating terms which are substantially similar to those set out in this Schedule. As between the Customer and ScholarPack, ScholarPack shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause. ScholarPack shall promptly provide the Customer with the details of any sub processor upon request.

## 10. Data Retention

- 10.1 ScholarPack shall perform secure back-ups of all Customer Data in accordance with its archiving procedures from time to time.
- 10.2 ScholarPack shall delete Customer Data on termination of the agreement unless required by Applicable Law to store the Customer Data save that:
  - 10.2.1. ScholarPack may retain such data in accordance with the particulars set out in Part 2 below; and
  - 10.2.2. if ScholarPack receives, no later than ten days after the effective date of the termination of this Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data, ScholarPack shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination) and all of ScholarPack's fees for this data back up copy which shall be charged at ScholarPack's prevailing rates at that time.
- 10.3 The Customer shall pay all reasonable expenses incurred by ScholarPack in returning or disposing of Customer Data.

## Part 2 - Personal Data Processing Purposes And Details

**Subject matter of processing:** The processing of Personal Customer Data in connection with the supply of the Services.

**Duration of Processing:** ScholarPack may retain the Customer Data while it is providing the Services and a backup of the Customer Data for the period set out in its archiving and data retention policies available upon request or if required to maintain any Customer Data by applicable law.

**Nature and Purposes of Processing and Processing Instructions:** To provide the Services as described in this Agreement and in its Privacy Policy.

### Type of Data/Personal Customer Data Categories:

It is not possible to forecast exactly what information the Customer's employees and contractors will input into the Software but it is expected that this may include the following:

Pupils	Pupil Contacts	Staff & Volunteers
Name	Name	Name
Address	Address	Address
Age	Gender	Telephone Number
Gender	Telephone number	Email address
Siblings	Email address	Health and medical information
Race or ethnic origin	Relationship to child	Emergency contact name and telephone number
Religious or philosophical beliefs		Contract Information
Health and medical information		
Dietary Information		
Academic performance		
Disciplinary information		
Safeguarding and Child Protection information		
Languages spoken		

#### Data Subject Types:

- Children (current, former and future pupils)
- Employees
- Volunteers
- Parents and other relatives
  
- Special Category Data: Yes, the records may include medical data, data about safeguarding, data about religious or philosophical beliefs, racial and ethnic origin. See above.

Document ends