T+Cs below relate to The Academy of PE , T.A.P.E

***NOTE***

*Section 1 contains terms and conditions for teachers*

*Section 2 contains terms and conditions for school groups and schools*

***Please review as appropriate to your use intentions***

**SECTION 1: Terms and Conditions for Teachers**

1 **Interpretation**

1.1 The definitions and rules of interpretation in this clause apply in these Terms and Conditions and any Agreement.

**“Agreement”**means each agreement comprising of these Terms and Conditions, the relevant sections of the Website referred to in these Terms and Conditions, the information provided by you in the Application Form or Free Trial Request when registering using the registration process on the Website and our confirmation of acceptance of your registration;

**“Application Form”**means the form to be completed by you on the Website when applying to subscribe for the Services;

“**Business Day**” means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for non-automated banking business;

“**Confidential Information**” means information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 11.5;

“**Content**” means the teaching materials and lesson plans compliant with the objectives of the national curriculum of the examination boards specified therein and consistent with statutory and Ofsted requirements, and any other information and data from (or T.A.P.E & its suppliers) available by means of the Services or on the Website regarding the features, operation or use of the Services;

**“Customer”, “you” “your”** means person named as the applicant in the completed Application Form;

“**Customer Data**” means the data, information or materials provided or submitted by the Customer for the purpose of using the Services or facilitating the Customer’s use of the Services but excluding any Modified Services, Content or Documentation;

“**Customer** **Support** ” means T.A.P.E’s customer support services;

“**Documentation**” means the Content and documents made available to the Customer by T.A.P.E online via the Website which sets out a description of the Services and the user instructions for the Services;

“**Effective Date**” means the date on which we confirm to you our acceptance of your Application Form;

**“Free Trial Request”**means the form to be completed by you on the Website when applying to undertake a free of charge trial of the Services;

**“Free Trial Date”**means the date on which we confirm to you our acceptance of your Free Trial Request;

**“Free Trial Term”** means the period of up to seven (7) days commencing on the Free Trial Date during which period prospective subscribers are entitled to use the Services free of charge;

“**Initial Subscription Term**” means period of twelve (12) months commencing on the Effective Date;

**“Intellectual Property Rights”** means any and all copyright, know-how, rights in inventions, patents, know-how, trade secrets, trade marks and trade names, service marks, design rights, rights in get-up, database rights and rights in data, semiconductor chip topography rights, the right to sue for passing off, utility models, domain names and all similar rights and, in each case:

(a) whether registered or not,

(b) including any applications to protect or register such rights,

(c) including all renewals and extensions of such rights or applications,

(d) whether vested, contingent or future and

(e) wherever existing;

**“Modified Services, Content or Documentation”**has the meaning given in clause 5.4;

“**Normal Business Hours**” means 8.00 am to 6.00 pm local UK time, each Business Day;

“**Pricing Schedule**” means the schedule of Subscription Fees payable for the Services as referred to and available via the following link ;

“**Renewal Period**” has the meaning given in clause 15.1.2;

“**Services**” means the subscription services provided by T.A.P.E to the Customer under these Terms and Conditions and any Agreement via the Website, as more particularly described in the Documentation;

“**Software**” means the online software applications provided by T.A.P.E as part of the Services;

“**Subscription Fees**” means the subscription fees payable by the Customer to T.A.P.E for the Services, as set out in the Pricing Schedule;

“**Subscription Term**” means period comprising of (where applicable) the Initial Subscription Term together with any subsequent Renewal Periods;

“**Support Services Policy**” means T.A.P.E policy for providing support in relation to the Services as made available via the Website;

**“Term”** means the Free Trial Term or where applicable the Subscription Term;

**“**T.A.P.E **”, “we” “our” “us”** means The Academy of PE Limited a company incorporated in Scotland (Company no. SC732978) with registered office at 5 Saint Andrews Avenue, Bothwell, G71 8DN

“**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; and

**“Website”** our website at\*\*\*\*\*\*\*\*\* or such other website address as may be notified to you from time to time.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of these Terms and Conditions.

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

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

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

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

1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of the relevant Agreement that we may enter into with you.

1.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of these Terms and Conditions 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 these Terms and Conditions; references to paragraphs are to paragraphs of the relevant schedule to these Terms and Conditions.

2 **Agreement**

A legally binding Agreement will be formed if you submit a duly completed Application Form to us via the Website and we confirm our acceptance of your Application Form. We shall not be obliged to accept your Application Form and we reserve the right to reject any such form that you may submit at our sole discretion.

3 **User subscriptions**

3.1 Subject to the terms and conditions of the relevant Agreement, T.A.P.E hereby grants to the Customer a non-exclusive, non-transferable right to use the Services and the Documentation solely for your own personal use as a teacher during:

3.1.1 the Free Trial Term on a free of charge basis if you submit and we accept a duly completed Free Trial Request; and

3.1.2 the Subscription Term, if you submit and we accept a duly completed Application Form, subject to payment by the Customer of the applicable Subscription Fees.

3.2The Customer undertakes that:

 it shall not sublicense, resell, assign or supply the Service for use by any other person or in any organisation, school (or other educational establishment), entity, business, or enterprise without T.A.P.E ‘s prior written consent;

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

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

3.3.2 facilitates illegal activity;

3.3.3 depicts sexually explicit images;

3.3.4 promotes unlawful violence;

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

3.3.6 in a manner that is otherwise illegal or causes damage or injury to any person or property;

and T.A.P.E reserves the right, without liability or prejudice to its other rights, to disable the Customer’s access to any part of the Services or Content if the Customer breaches the provisions of this clause.

3.4 The Customer is permitted to display the Content only for their own personal use. For the avoidance of doubt the Customer shall not:

3.4.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under these Terms and Conditions and any 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 and/or Documentation (as applicable) in any form or media or by any means; or

3.4.1.2 attempt to 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, Content and Documentation in order to build a product or service which competes with the Services, Content and/or the Documentation; or

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

3.4.4 subject to clause 23.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services, Content and/or Documentation available to any third party, or

3.4.5 attempt to obtain, or assist third parties in obtaining, access to the Services, Content and/or Documentation.

3.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services, Content and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify T.A.P.E.

3.6 The rights provided under clause 3.1 are granted to the Customer only, and shall not be considered granted to any other person or in any organisation, school (or other educational establishment), entity, business, or enterprise.

3.7 The Customer acknowledges and confirms that it is not a consumer for the purpose of Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, the Consumer Rights Act 2015 nor will enter into any Agreement in the capacity of a consumer.

3.8 The Customer acknowledges and agrees that nothing in these Terms and Conditions and any Agreement shall prevent T.A.P.E 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 these Terms and Conditions and any Agreement.

4 **Services**

4.1 T.A.P.E shall, during the Term, provide the Services and make available the Content and Documentation to the Customer on and subject to the terms of these Terms and Conditions and the relevant Agreement entered into with you.

4.2 T.A.P.E shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except during the performance of  planned or unscheduled maintenance, provided that T.A.P.E has used reasonable endeavours to give the Customer advance notice thereof.

4.3 T.A.P.E will, as part of the Services and at no additional cost to the Customer, provide the Customer with T.A.P.E’s standard customer support services during Normal Business Hours in accordance with T.A.P.E’s Support Services Policy in effect at the time that the Services are provided. T.A.P.E may amend the Support Services Policy in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at T.A.P.E’s then current rates.

5 **Customer Data, Modified Content etc**

5.1 The Customer shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

5.2 T.A.P.E shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by the Customer or any third party.

5.3 If T.A.P.E processes any personal data on the Customer’s behalf when performing its obligations under any Agreement, the parties record their intention that the Customer shall be the data controller and T.A.P.E shall be a data processor and in any such case:

5.3.1 the Customer acknowledges and agrees that the personal data may be transferred or stored outside the European Union or the country where the Customer is located in order to carry out the Services and T.A.P.E’s other obligations under any Agreement;

5.3.2 the Customer shall ensure that the Customer is entitled to transfer the relevant personal data (if any) to T.A.P.E so that T.A.P.E may lawfully use, process and transfer the personal data in accordance with these Terms and Conditions and any Agreement on the Customer’s behalf;

5.3.3 the Customer shall 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;

5.3.4 T.A.P.E shall process the personal data only in accordance with these Terms and Conditions and any Agreement and any lawful instructions reasonably given by the Customer from time to time; and

5.3.5 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.

5.4 Without prejudice to any clause in this agreement in the event the Customer creates or does anything which amounts to a copy, modification, duplication or creation of derivative works in the Services, Content or Documentation or which frames, mirrors, republish, downloads, displays, transmits, or distributes all or any portion of such derivative works (together the ” **Modified Services, Content or Documentation**“):

5.4.1 the Customer shall procure that all such Modified Services, Content or Documentation is disclosed to T.A.P.E and saved on the Customer’s dedicated storage space on our cloud based software platform;

5.4.2 the Customer hereby assigns to T.A.P.E by way of present assignation of future works, all right, title and interest in and to all of the Modified Services, Content or Documentation (including all Intellectual Property Rights therein),

provided always that the Customer shall be entitled to use all such Modified Services, Content or Documentation for the Customer’s normal teaching activities during the Term (but not otherwise) to the same extent that the Customer is entitled to use any Services, Content or Documentation under these Terms and Conditions and any Agreement.

6 **Third party providers**

The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. T.A.P.E makes no representation 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 T.A.P.E . T.A.P.E 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. T.A.P.E does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

7 **Tape’s obligations**

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

7.2 The undertaking at clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Tape’s instructions, or modification or alteration of the Services by any party other than TAPE or TAPE’S duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, TAPE will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer’s sole and exclusive remedy for any breach of the undertaking set out in clause 7.1 Notwithstanding the foregoing, TAPE:

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

7.2.2 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 Customer acknowledges that the Services, Content and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

7.3 The Customer acknowledges and agrees that the Content supplied is only compliant with the objectives of the national curriculum of the examination boards and/ or consistent with statutory and Ofsted requirements as specified in the Materials available by means of the Services or on the Website regarding the features, operation or use of the Services, beyond which no warranty or guarantee is provided.

8 **Customer’s obligations**

8.1 The Customer shall:

8.1.1 provide TAPE with:

8.1.1.1 all necessary co-operation in relation to these Terms and Conditions and any Agreement; and

8.1.1.2 all necessary access to such information as may be required by TAPE,

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

8.1.2 comply with all applicable laws and regulations with respect to its activities under these Terms and Conditions and any Agreement;

8.1.3 carry out all other Customer responsibilities set out in these Terms and Conditions and any Agreement in a timely and efficient manner. In the event of any delays in the Customer’s provision of such assistance as agreed by the parties, TAPE may adjust any agreed timetable or delivery schedule as reasonably necessary;

8.1.4 use the Services, Content and the Documentation in accordance with these Terms and Conditions and any Agreement;

8.1.5 obtain and shall maintain all necessary licences, consents, and permissions necessary for TAPE, its contractors and agents to perform their obligations under these Terms and Conditions and any Agreement, including without limitation the Services;

8.1.6 ensure that computer or mobile hardware and software used by the Customer to access the Services complies with the relevant specifications provided by TAPE from time to time; and

8.1.7 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Uteach’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 **Charges and payment**

9.1 TAPE acknowledges and confirms that no fees shall be payable by the Customer in respect of its use of the Services during the Free Trial Term.

9.2 If you continue to receive the Services after the end of the Trial Subscription Term, you will be obliged to pay us the Subscription Fees. The Subscription Fees are the recurring fees for the Customer’s use of the Services for a given billing interval and will be calculated in accordance with the Pricing Schedule.

9.3 The Customer shall pay TAPE for all Subscription Fees via the following payment methods: Stripe, direct debit, debit card or credit card.

9.4 TAPE has the right to take court action and claim interest on any missed or late payments from the Customer, cancel or suspend the provision of any Services or pursue such other rights or remedies available to TAPE at its sole discretion.

9.5 If the Customer believes that any specific invoice rendered under any Agreement is incorrect, in order to obtain a credit, the Customer must contact TAPE in writing within 10 Business Days of the invoice date setting forth the nature and amount of the requested correction and pay the undisputed portion by the due date and the Customer acknowledges it shall remain liable for the disputed portion unless and until it is resolved in the Customer’s favour; otherwise all Subscription Fees and other charges are final.

10 **Proprietary rights**

10.1 The Customer acknowledges and agrees that TAPE and/or its licensors own all intellectual property rights in the Services, Content and the Documentation and/or Modified Services, Content or Documentation. Except as expressly stated herein, these Terms and Conditions and any Agreement do not grant the Customer any rights to, or in, 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, Content or the Documentation.

10.2 TAPE confirms that it has all the rights in relation to the Services, Content and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of these Terms and Conditions and any.

11 **Confidentiality**

11.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under these Terms and Conditions and any Agreement. A party’s Confidential Information shall not be deemed to include information that:

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

11.1.2 was in the other party’s lawful possession before the disclosure;

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

11.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or

11.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

11.2 Each party shall hold the other’s Confidential Information in confidence and, unless required by law, 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 these Terms and Conditions and any Agreement.

11.3 Each party shall take all reasonable steps to ensure that the other’s Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of these Terms and Conditions and any Agreement.

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

11.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute TAPE’S Confidential Information.

11.6 TAPE acknowledges that the Customer Data is the Confidential Information of the Customer.

11.7 This clause 11 shall survive termination of any Agreement, however arising.

11.8 No party shall make, or permit any person to make, any public announcement concerning any 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.

11.9 TAPE’s privacy and security policies can be accessed at the Website. TAPE reserves the right to modify its privacy and security policies in its sole discretion from time to time.

12 **Indemnity**

12.1 The Customer shall defend, indemnify and hold harmless TAPE 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 any use of the Services, Content and/or Documentation by the Customer which is not strictly in accordance with these Terms and Conditions or any relevant Agreement, provided that:

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

12.1.2 TAPE provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer’s expense; and

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

12.2 TAPE shall defend the Customer, its officers, directors and employees against any claim that the Services, Content or Documentation infringes any copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

12.2.1 TAPE is given prompt notice of any such claim;

12.2.2 the Customer provides reasonable co-operation to TAPE in the defence and settlement of such claim, at TAPE expense; and

12.2.3 TAPE is given sole authority to defend or settle the claim.

12.3 In the defence or settlement of any claim, TAPE may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate any Agreement on two (2) Business Days’ notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

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

12.4.1 a modification of the Services, Content or Documentation by anyone other than TAPE; or

12.4.2 the Customer’s use of the Services, Content or Documentation in a manner contrary to the instructions given to the Customer by TAPE; or

12.4.3 the Customer’s use of the Services, Content or Documentation after notice of the alleged or actual infringement from TAPE or any appropriate authority.

12.5 Subject to clause 13.3, the foregoing provisions in this clause 12 and clause 13.4.2 states the Customer’s sole and exclusive rights and remedies, and TAPE’S (including TAPE’S employees’, agents’ and sub-contractors’) entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

13 **Limitation of liability**

13.1 This clause 13 sets out the entire financial liability of TAPE (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:

13.1.1 arising under or in connection with these Terms and Conditions and any Agreement;

13.1.2 in respect of any use made by the Customer of the Services, Content and Documentation or any part of them; and

13.1.3 in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with these Terms and Conditions and any Agreement.

13.2 Except as expressly and specifically provided in these Terms and Conditions and any Agreement:

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

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

13.2.3 the Services, Content and the Documentation are provided to the Customer on an “as is” basis.

13.3 Nothing in these Terms and Conditions and any Agreement excludes the liability of TAPE:

13.3.1 for death or personal injury caused by TAPE’S negligence; or

13.3.2 for fraud or fraudulent misrepresentation.

13.4 Subject to clause 13.2 and clause 13.3:

13.4.1 TAPE 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 these Terms and Conditions and any Agreement; and

13.4.2 TAPE’S total aggregate liability in contract (including in respect of the indemnity at clause 12.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of these Terms and Conditions and any Agreement shall be limited to the total Subscription Fees paid for the User Subscriptions during the twelve (12) months immediately preceding the date on which the claim arose.

14 **Term and termination**

14.1 Any Agreement relating to

14.1.1 a Free Trial Request which has been duly accepted by us shall, unless otherwise terminated as provided in this clause 14, commence on the Free Trial Date and shall expire at the end of the Free Trial Term and access to the Services shall then be terminated; and

14.1.2  an Application Form which has been duly accepted by us shall, unless otherwise terminated as provided in this clause 15, shall commence on the Effective Date and remain in force during the Initial Subscription Term and shall continue thereafter and automatically be renewed for successive periods of 12 months (each a “**Renewal Period**”) unless terminated by either party upon that party serving on the other party notice of termination of any Agreement no less than ninety (90) days prior to the last day of the Initial Subscription Term or no less than ninety (90) days prior to any subsequent anniversary of the last day of the Initial Subscription Term.

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

14.2.1 in relation to an Agreement formed upon our acceptance of your Application Form, the other party fails to pay any amount due under the relevant 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;

14.2.2 the other party commits a material breach of any other term of the relevant Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so;

14.2.3 the other party repeatedly breaches any of the terms of the relevant 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 the relevant Agreement;

14.2.4 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;

14.2.5 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;

14.2.6 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;

14.2.7 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;

14.2.8 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;

14.2.9 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;

14.2.10 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 ten (10) Business Days;

14.2.11 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 14.2.4 to clause 14.2.10 (inclusive);

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

14.3 On termination of any Agreement for any reason:

14.3.1 all licences granted under the relevant Agreement shall immediately terminate;

14.3.2 each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;

14.3.3 TAPE may destroy or otherwise dispose of any of the Customer Data in its possession unless TAPE receives, no later than ten (10) Business Days after the effective date of the termination of the relevant Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. TAPE shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by TAPE in returning or disposing of Customer Data; and

14.3.4 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.

15 **Force majeure**

TAPE shall have no liability to the Customer under these Terms and Conditions or any Agreement if it is prevented from or delayed in performing its obligations under any 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 TAPE or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

16 **Conflict**

If there is an inconsistency between any of the provisions in the main body of these Terms and Conditions any Application Form and the Pricing Schedule on http://www.uteachlessons.com/pricing, the provisions in the main body of these Terms and Conditions shall prevail and the Pricing Schedule shall prevail if there is an inconsistency between any of the provisions of any Application Form and the Pricing Schedule.

17 **Variation**

No variation of these Terms and Conditions and any Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

18 **Waiver**

No failure or delay by a party to exercise any right or remedy provided under these Terms and Conditions and any 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.

19 **Rights and remedies**

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

20 **Severance**

20.1 If any provision (or part of a provision) of these Terms and Conditions and any 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.

20.2 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.

21 **Entire agreement**

21.1 These Terms and Conditions, any Agreement, and any documents referred to herein or in any such Agreement, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

21.2 Each of the parties acknowledges and agrees that in entering into any Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to any Agreement or not) relating to the subject matter of these Terms and Conditions and any Agreement, other than as expressly set out in these Terms and Conditions and any Agreement.

22 **Assignment**

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

22.2 TAPE 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 any Agreement.

23 **No partnership or agency**

Nothing in these Terms and Conditions and any 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).

24 **Third party rights**

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

25 **Notices**

25.1 Almost all notices will be sent via email or notification. Unless otherwise stated by TAPE on their system.

25.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

26 **Governing law**

These Terms and Conditions and any 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.

27 **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 these Terms and Conditions and any Agreement or its subject matter or formation (including non-contractual disputes or claims).

**SECTION 2: Terms and Conditions for school groups and schools**

1 **Interpretation**

1.1 The definitions and rules of interpretation in this clause apply in these Terms and Conditions and any Agreement.

**“Agreement”**means each agreement comprising of these Terms and Conditions, the relevant sections of the Website referred to in these Terms and Conditions, the information provided by you in the Application Form or Free Trial Request when registering your school, or multi-school administration, and teachers in the registration process on the Website and our confirmation of acceptance of your registration;

**“Application Form”**means the form to be completed by you on the Website when applying on behalf of your school, or multi-school administration, and teachers, to subscribe for the Services;

“**Authorised Account Users**” means those employees, agents and independent contractors of the School (or where applicable any School) who are authorised to use the Services, Content and the Documentation in accordance with these Terms and Conditions and any Agreement;

“**Business Day**” means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for non-automated banking business;

“**Change of Control** ” means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and **controls**, **controlled** and the expression **change of control** shall be construed accordingly;

“**Confidential Information**” means information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 12.5;

“**Content**” means the teaching materials and lesson plans compliant with the objectives of the national curriculum of the examination boards specified therein and consistent with statutory and Ofsted requirements, and any other information and data from TAPE (or its suppliers) available by means of the Services or on the Website regarding the features, operation or use of the Services;

**“Customer”, “you” “your”** means where the Application Form is being submitted on behalf of a single School, the headmaster or authorised official of the School named in the completed Application Form and where the Application Form is being submitted on behalf of a multi-school administration, the multi-school administration so named in the completed Application Form;

“**Customer Data**” means the data, information or materials provided or submitted by the Customer and or Authorised Account Users for the purpose of using the Services or facilitating the Customer’s use of the Services but excluding any Modified Services, Content or Documentation;

“**Customer** **Support** ” means TAPE’S customer support services;

“**Documentation**” means the Content and documents made available to the Customer by TAPE online via the Website which sets out a description of the Services and the user instructions for the Services;

“**Effective Date**” means the date on which we confirm to you our acceptance of your Application Form;

**“Free Trial Request”**means the form to be completed by you on the Website when applying on behalf of your school, or multi-school administration, and teachers to undertake a free of charge trial of the Services;

**“Free Trial Date”**means the date on which we confirm to you our acceptance of your Free Trial Request;

**“Free Trial Term”** means the period of up to seven (7) days commencing on the Free Trial Date during which period prospective subscribers are entitled to use the Services free of charge;

“**Initial Subscription Term**” means period of twelve (12) months commencing on the Effective Date;

**“Intellectual Property Rights”** means any and all copyright, know-how, rights in inventions, patents, know-how, trade secrets, trade marks and trade names, service marks, design rights, rights in get-up, database rights and rights in data, semiconductor chip topography rights, the right to sue for passing off, utility models, domain names and all similar rights and, in each case:

(a) whether registered or not;

(b) including any applications to protect or register such rights;

(c) including all renewals and extensions of such rights or applications;

(d) whether vested, contingent or future; and

(e) wherever existing;

**“Modified Services, Content or Documentation”**has the meaning given in clause 6.4;

“**Normal Business Hours**” means 8.00 am to 6.00 pm local UK time, each Business Day;

“**Pricing Schedule**” means the schedule of Subscription Fees payable for the Services as referred to and available via the following  link <http://www.theacademyofpe.com/pricing>;

“**Renewal Period**” has the meaning given in clause 15.1.2;

**“School”** means the school or multi-school administration named in your Application Form;

“**Services**” means the subscription services provided by TAPE to the School (or where applicable Schools) under these Terms and Conditions and any Agreement via the Website, as more particularly described in the Documentation;

“**Software**” means the online software applications provided by TAPE as part of the Services;

“**Subscription Fees**” means the subscription fees payable by the Customer to TAPE for the User Subscriptions, as set out in the Pricing Schedule;

“**Subscription Term**” means the period comprising of (where applicable) the Initial Subscription Term together with any subsequent Renewal Periods;

“**Support Services Policy**” means TAPE’S policy for providing support in relation to the Services as made available via the Website;

**“Term”** means the Free Trial Term or where applicable the Subscription Term;

“**User Subscriptions** ” means the user subscriptions purchased by you which entitle Authorised Account Users to access and use the Services, Content and the Documentation in accordance with these Terms and Conditions and any Agreement;

**“TAPE”, “we” “our” “us”** means The Academy of PE Limited a company incorporated in Scotland (Company no. SC732978) with registered office at ST Andrew’s Avenue, Bothwell
Scotland United Kingdom G71 8DN;

“**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; and

**“Website”** our website at <http://www.theacademyofpe.com> or such other website address as may be notified to you from time to time.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of these Terms and Conditions.

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

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

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

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

1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of the relevant Agreement that we may enter into with you.

1.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of these Terms and Conditions 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 these Terms and Conditions; references to paragraphs are to paragraphs of the relevant schedule to these Terms and Conditions.

2 **Agreement**

A legally binding Agreement will be formed if you submit a duly completed Application Form to us via the Website and we confirm our acceptance of your Application Form. We shall not be obliged to accept your Application Form and we reserve the right to reject any such form that you may submit at our sole discretion.

3 **User subscriptions**

3.1 Subject to the terms and conditions of the relevant Agreement, TAPE hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Account Users to use the Services and the Documentation solely for your internal management and operation of the School (or where applicable Schools) during:

3.1.1 the Free Trial Term on a free of charge basis if you submit and we accept a duly completed Free Trial Request; and

3.1.2 the Subscription Term, if you submit and we accept a duly completed Application Form, subject to payment by the Customer of the applicable Subscription Fees.

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

3.2.1 it will not allow or suffer any User Subscription to be used by more than one individual Authorised Account User unless it has been reassigned in its entirety to another individual Authorised Account User, in which case the prior Authorised Account User shall no longer have any right to access or use the Services, Content and/or Documentation and the Customer is responsible for enabling and disabling individual Authorised Account Users;

3.2.2 it shall not sublicense, resell or supply the Service for use in any organisation, school (or other educational establishment), entity, business, or enterprise other than the School (or where applicable Schools) without TAPE’S prior written consent;

3.2.3 it shall permit TAPE to audit the Services in order to establish the name and password of each Authorised Account User. Such audit may be conducted no more than once per quarter, at TAPE’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 operation of the School (or where applicable Schools);

3.2.4 if any of the audits referred to in clause 3.2.3 reveal that any password has been provided to any individual who is not an Authorised Account User, then without prejudice to TAPE’S other rights, the Customer shall promptly disable such passwords and TAPE shall not issue any new passwords to any such individual; and

3.2.5 if any of the audits referred to in clause 3.2.3 reveal that the Customer has underpaid Subscription Fees to TAPE, then without prejudice to TAPE’S other rights, the Customer shall pay to TAPE an amount equal to such underpayment as calculated in accordance with the prices set out in the Pricing Schedule within fifteen (15) Business Days of the date of the relevant audit.

3.3 The Customer shall not (and shall procure that each Authorised Account User shall not) access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

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

3.3.2 facilitates illegal activity;

3.3.3 depicts sexually explicit images;

3.3.4 promotes unlawful violence;

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

3.3.6 in a manner that is otherwise illegal or causes damage or injury to any person or property;

and TAPE reserves the right, without liability or prejudice to its other rights, to disable the Customer’s (and or any Authorised Account User’s) access to any part of the Services or Content if the Customer or any of its Authorised Account Users breaches the provisions of this clause.

3.4 The Customer is permitted to display the Content only for its own business use in connection with the School (or where applicable Schools). For the avoidance of doubt the Customer shall not:

3.4.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under these Terms and Conditions and any 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 and/or Documentation (as applicable) in any form or media or by any means; or

3.4.1.2 attempt to 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, Content and Documentation in order to build a product or service which competes with the Services, Content and/or the Documentation; or

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

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

3.4.5 attempt to obtain, or assist third parties in obtaining, access to the Services, Content and/or Documentation, other than Authorised Account Users.

3.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services, Content and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify TAPE.

3.6 The rights provided under clause 3.1 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

3.7 The Customer acknowledges and confirms that it is not a consumer for the purpose of Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, the Consumer Rights Act 2015 nor will enter into any Agreement in the capacity of a consumer.

3.8 The Customer acknowledges and agrees that nothing in these Terms and Conditions and any Agreement shall prevent TAPE 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 these Terms and Conditions and any Agreement.

4 **Additional User Subscriptions**

The Customer may, from time to time during the Term, acquire additional Authorised Account Users and TAPE may at its discretion grant access to the Services, Content and the Documentation to such additional Authorised Account Users subject to and in accordance with the provisions of these Terms and Conditions and any Agreement.

5 **Services**

5.1 TAPE shall, during the Term, provide the Services and make available the Content and Documentation to the Customer on and subject to the terms of these Terms and Conditions and the relevant Agreement entered into with you.

5.2 TAPE shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except during the performance of planned or unscheduled maintenance, provided that TAPE has used reasonable endeavours to give the Customer advance notice thereof.

5.3 TAPE will, as part of the Services and at no additional cost to the Customer, provide the Customer with TAPE’S standard customer support services during Normal Business Hours in accordance with TAPE’S Support Services Policy in effect at the time that the Services are provided. TAPE may amend the Support Services Policy in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at TAPE’S then current rates.

6 **Customer Data, Modified Content etc**

6.1 The Customer shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

6.2 TAPE shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by the Customer, any Authorised Account User or any third party.

6.3 If TAPE processes any personal data on the Customer’s behalf when performing its obligations under any Agreement, the parties record their intention that the Customer shall be the data controller and TAPE shall be a data processor and in any such case:

63.1 the Customer acknowledges and agrees that the personal data may be transferred or stored outside the European Union or the country where the Customer and the Authorised Account Users are located in order to carry out the Services and TAPE’S other obligations under any Agreement;

6.3.2 the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to TAPE so that TAPE may lawfully use, process and transfer the personal data in accordance with these Terms and Conditions and any Agreement on the Customer’s behalf;

6.3.3 the Customer shall 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;

6.3.4 TAPE shall process the personal data only in accordance with these Terms and Conditions and any Agreement and any lawful instructions reasonably given by the Customer from time to time; and

6.3.5 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.

6.4 Without prejudice to any clause in this agreement in the event the Customer (or any Authorised Account User) creates or does anything which amounts to a copy, modification, duplication or creation of derivative works in the Services, Content or Documentation or which frames, mirrors, republish, downloads, displays, transmits, or distributes all or any portion of such derivative works (together the ” **Modified Services, Content or Documentation**“):

6.4.1 the Customer shall procure that all such Modified Services, Content or Documentation is disclosed to TAPE and saved on the Customer’s dedicated storage space on our cloud based software platform;

6.4.2 the Customer hereby assigns (and the Customer shall procure that each Authorised Account User shall assign) to TAPE by way of present assignation of future works, all right, title and interest in and to all of the Modified Services, Content or Documentation (including all Intellectual Property Rights therein),

provided always that the Customer shall be entitled to use all such Modified Services, Content or Documentation for the Customer’s normal management and operation of the School (or where applicable Schools) during the Term (but not otherwise) to the same extent that the Customer is entitled to use any Services, Content or Documentation under these Terms and Conditions and any Agreement.

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 . TAPE makes no representation 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 TAPE. TAPE 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. TAPE 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 **TAPE’S obligations**

8.1 TAPE 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 TAPE’S instructions, or modification or alteration of the Services by any party other than TAPE or TAPE’s duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, TAPE will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer’s sole and exclusive remedy for any breach of the undertaking set out in clause 8.1 Notwithstanding the foregoing, TAPE:

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

8.2.2 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 Customer acknowledges that the Services, Content and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

8.3 The Customer acknowledges and agrees that the Content supplied is only compliant with the objectives of the national curriculum of the examination boards and/ or consistent with statutory and Ofsted requirements as specified in the Materials available by means of the Services or on the Website regarding the features, operation or use of the Services, beyond which no warranty or guarantee is provided.

9 **Customer’s obligations**

9.1 The Customer shall:

9.1.1 provide TAPE with:

9.1.1.1 all necessary co-operation in relation to these Terms and Conditions and any Agreement; and

9.1.1.2 all necessary access to such information as may be required by TAPE,

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

9.1.2 comply with all applicable laws and regulations with respect to its activities under these Terms and Conditions and any Agreement;

9.1.3 carry out all other Customer responsibilities set out in these Terms and Conditions and any Agreement in a timely and efficient manner. In the event of any delays in the Customer’s provision of such assistance as agreed by the parties, TAPE may adjust any agreed timetable or delivery schedule as reasonably necessary;

9.1.4 ensure that the Authorised Account Users use the Services, Content and the Documentation in accordance with these Terms and Conditions and any Agreement and shall be responsible for any Authorised Account User’s breach of these Terms and Conditions and any Agreement;

9.1.5 obtain and shall maintain all necessary licences, consents, and permissions necessary for TAPE, its contractors and agents to perform their obligations under these Terms and Conditions and any Agreement, including without limitation the Services;

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

9.1.7 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to TAPE’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.

10 **Charges and payment**

10.1 TAPE acknowledges and confirms that no fees shall be payable by the Customer in respect of its use of the Services during the Free Trial Term.

10.2 If you continue to receive the Services after the end of the Trial Subscription Term, you will be obliged to pay us the Subscription Fees. The Subscription Fees will be calculated in accordance with the Pricing Schedule.

10.3 The Subscription Fees are the recurring fees for Authorised Account Users and are based on the number of Authorised Users as specified in the Pricing Schedule. For a given billing interval, the Subscription Fee is equal to the number of billable Authorised Account Users on the first day of that billing interval multiplied by the monthly Subscription Fee per Authorised Account User for the applicable Service, then multiplied by the number of months in the billing interval.

10.4 The number of billable Authorised Account Users for the first billing interval is the initial number of Authorised Account Users. Subject to clause 10.1, additional Authorised Account Users that are added in accordance with clause 4 will be charged as billable Authorised Account Users at the then current price per Authorised Account User without any corresponding downward adjustment for Authorised Account Users that for any reason no longer use or have access to the Service. For the remainder of the Term, Customer shall pay the additional Subscription Fee for each Authorised Account User added, monthly in advance for other Authorised Account Users under these Terms and Conditions and any Agreement.

10.5 The Customer shall pay TAPE for all Subscription Fees via the following payment methods: Go Cardless, direct debit, debit card or credit card.

10.6 TAPE has the right to take court action and claim interest on any missed or late payments from the Customer, cancel or suspend the provision of any Services or pursue such other rights or remedies available to TAPE at its sole discretion.

10.7 If the Customer believes that any specific invoice rendered under any Agreement is incorrect, in order to obtain a credit, the Customer must contact TAPE in writing within 10 Business Days of the invoice date setting forth the nature and amount of the requested correction and pay the undisputed portion by the due date and the Customer acknowledges it shall remain liable for the disputed portion unless and until it is resolved in the Customer’s favour; otherwise all Subscription Fees and other charges are final.

11 **Proprietary rights**

11.1 The Customer acknowledges and agrees that TAPE and/or its licensors own all intellectual property rights in the Services, Content and the Documentation and/or Modified Services, Content or Documentation. Except as expressly stated herein, these Terms and Conditions and any Agreement do not grant the Customer any rights to, or in, 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, Content or the Documentation.

11.2 TAPE confirms that it has all the rights in relation to the Services, Content and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of these Terms and Conditions and any.

12 **Confidentiality**

12.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under these Terms and Conditions and any Agreement. A party’s Confidential Information shall not be deemed to include information that:

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

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

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

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

12.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

12.2 Each party shall hold the other’s Confidential Information in confidence and, unless required by law, 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 these Terms and Conditions and any 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 these Terms and Conditions and any Agreement.

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

12.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute TAPE’S Confidential Information.

12.6 TAPE acknowledges that the Customer Data is the Confidential Information of the Customer.

12.7 This clause 12 shall survive termination of any Agreement, however arising.

12.8 No party shall make, or permit any person to make, any public announcement concerning any 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 TAPE’s privacy and security policies can be accessed at the Website. TAPE reserves the right to modify its privacy and security policies in its sole discretion from time to time.

13 **Indemnity**

13.1 The Customer shall defend, indemnify and hold harmless TAPE 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 any use of the Services, Content and/or Documentation by the Customer or any Authorised Account User(s) which is not strictly in accordance with these Terms and Conditions or any relevant Agreement, provided that:

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

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

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

13.2 TAPE shall defend the Customer, its officers, directors and employees against any claim that the Services, Content or Documentation infringes any copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

13.2.1 TAPE is given prompt notice of any such claim;

13.2.2 the Customer provides reasonable co-operation to TAPE in the defence and settlement of such claim, at TAPE’S expense; and

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

13.3 In the defence or settlement of any claim, TAPE may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate any Agreement on two (2) Business Days’ notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

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

13.4.1 a modification of the Services, Content or Documentation by anyone other than TAPE; or

13.4.2 the Customer’s use of the Services, Content or Documentation in a manner contrary to the instructions given to the Customer by TAPE; or

13.4.3 the Customer’s use of the Services, Content or Documentation after notice of the alleged or actual infringement from TAPE or any appropriate authority.

13.5 The foregoing provisions in this clause 13 and clause 14.4.2 states the Customer’s sole and exclusive rights and remedies, and TAPE’s (including TAPE’S employees’, agents’ and sub-contractors’) entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

14 **Limitation of liability**

14.1 This clause 14 sets out the entire financial liability of TAPE (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:

14.1.1 arising under or in connection with these Terms and Conditions and any Agreement;

14.1.2 in respect of any use made by the Customer of the Services, Content and Documentation or any part of them; and

14.1.3 in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with these Terms and Conditions and any Agreement.

14.2 Except as expressly and specifically provided in these Terms and Conditions and any Agreement:

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

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

14.2.3 the Services, Content and the Documentation are provided to the Customer on an “as is” basis.

14.3 Nothing in these Terms and Conditions and any Agreement excludes the liability of TAPE:

14.3.1 for death or personal injury caused by TAPE’S negligence; or

14.3.2 for fraud or fraudulent misrepresentation.

14.4 Subject to clause 14.2 and clause 14.3:

14.4.1 TAPE 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 these Terms and Conditions and any Agreement; and

14.4.2 TAPE’S total aggregate liability in contract (including in respect of the indemnity at clause 13.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of these Terms and Conditions and any Agreement shall be limited to the total Subscription Fees paid for the User Subscriptions during the twelve (12) months immediately preceding the date on which the claim arose.

15 **Term and termination**

15.1 Any Agreement relating to;

5.1.1 a Free Trial Request which has been duly accepted by us shall, unless otherwise terminated as provided in this clause 15, commence on the Free Trial Date and shall expire at the end of the Free Trial Term and access to the Services shall then be terminated.

5.1.2 an Application Form which has been duly accepted by us shall, unless otherwise terminated as provided in this clause 15, shall commence on the Effective Date and remain in force during the Initial Subscription Term and shall continue thereafter and automatically be renewed for successive periods of 12 months (each a “**Renewal Period**”) unless terminated by either party upon that party serving on the other party notice of termination of any Agreement no less than ninety (90) days prior to the last day of the Initial Subscription Term or no less than ninety (90) days prior to any subsequent anniversary of the last day of the Initial Subscription Term.

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

15.2.1 in relation to an Agreement formed upon our acceptance of your Application Form, the other party fails to pay any amount due under the relevant Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;

15.2.2 the other party commits a material breach of any other term of the relevant Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so;

15.2.3 the other party repeatedly breaches any of the terms of the relevant 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 the relevant Agreement;

15.2.4 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;

15.2.5 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;

15.2.6 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;

15.2.7 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;

15.2.8 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;

15.2.9 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;

15.2.10 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 ten (10) Business Days;

15.2.11 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 15.2.4 to clause 15.2.10 (inclusive);

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

15.3 On termination of any Agreement for any reason:

15.3.1 all licences granted under the relevant Agreement shall immediately terminate;

15.3.2 each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;

15.3.3 TAPE may destroy or otherwise dispose of any of the Customer Data in its possession unless TAPE receives, no later than ten (10) Business Days after the effective date of the termination of the relevant Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. TAPE shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by TAPE in returning or disposing of Customer Data; and

15.3.4 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.

16 **Force majeure**

TAPE shall have no liability to the Customer under these Terms and Conditions or any Agreement if it is prevented from or delayed in performing its obligations under any 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 TAPE or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

17 **Conflict**

If there is an inconsistency between any of the provisions in the main body of these Terms and Conditions any Application Form and the Pricing Schedule on http://www.uteachlessons.com/pricing, the provisions in the main body of these Terms and Conditions shall prevail and the Pricing Schedule shall prevail if there is an inconsistency between any of the provisions of any Application Form and the Pricing Schedule.

18 **Variation**

No variation of these Terms and Conditions and any Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

19 **Waiver**

No failure or delay by a party to exercise any right or remedy provided under these Terms and Conditions and any 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 these Terms and Conditions and any Agreement, the rights and remedies provided under these Terms and Conditions and any Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

21 **Severance**

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

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

22 **Entire agreement**

22.1 These Terms and Conditions, any Agreement, and any documents referred to herein or in any such Agreement, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

22.2 Each of the parties acknowledges and agrees that in entering into any Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to any Agreement or not) relating to the subject matter of these Terms and Conditions and any Agreement, other than as expressly set out in these Terms and Conditions and any Agreement.

23 **Assignment**

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

23.2 TAPE 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 any Agreement.

24 **No partnership or agency**

Nothing in these Terms and Conditions and any 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**

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

26 **Notices**

26.1 Almost all notices will be sent via email or notification. Unless otherwise stated by TAPE on their system.

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

27 **Governing law**

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

28 **Jurisdiction**

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

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