

**DATED**

24 January 2018

**SOFTWARE AS A SERVICE SUBSCRIPTION AGREEMENT**

between

**Pupil Asset Limited (Supplier)**

and

[     ]



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**SCHEDULE**

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This is dated [DATE]

## Parties

- (1) Pupil Asset Limited incorporated and registered in England and Wales with company number 07310870 whose registered office is at St Mary's Croft, 13 Chapelfield, Norwich, Norfolk, NR2 1NY (**Supplier**)
- (2) [FULL CUSTOMER NAME] whose registered address is at [REGISTERED ADDRESS] (**Customer**)

## BACKGROUND

- (A) The Supplier has developed certain software applications and platforms which it makes available to subscribers via the internet on a pay-per-use and subscription basis for the purpose of providing a Management Information and Tracking System for schools and other learning establishments. The Customer wishes to use the Supplier's service in its organisation.
- (B) The Supplier has agreed to provide and the Customer has agreed to take and pay for the Supplier's service subject to the terms and conditions of this agreement.

### 1. Interpretation

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

**Authorised Users:** those employees and agents of the Customer who are authorised by the Customer to use the Services and the Documentation, as further described in clause 2.1 whilst acting in the course of their employment with the Customer and whom work from the Customer's main business premises (including a particular school or learning establishment) or remotely where such a user is based at the main business premises and has been authorised as such previously by the Customer. If the Customer has multiple sites it can apply to the Supplier for permission to add Authorised Users who are based away from the designated main business premises which the Supplier at its sole discretion may authorise (this may involve the charging of further fees subject to fair negotiation and agreement).

**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 is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 10.6.

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

**Documentation:** the document(s) made available to the Customer by the Supplier online via [www.pupilasset.com](http://www.pupilasset.com) or such other web address notified by the Supplier to the Customer from time to time which sets out a description of the Services and the user instructions for the Services. **Effective Date:** the date of this agreement.

**Free Content:** means any part of the Supplier's information which is accessible without being an Authorised User

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

**Mandatory Policies:** the Supplier's business policies and codes listed in Schedule 3, as amended by notification to the Customer from time to time.

**Normal Business Hours:** 8.30 am to 5.00 pm local UK time, each Business Day.

**Renewal Period:** a period of 12 months from the Effective Date.

**Services:** the subscription services provided by the Supplier to the Customer under this agreement via [www.pupilasset.com](http://www.pupilasset.com) (or any other website notified to the Customer by the Supplier from time to time), as more particularly described in the Documentation. The Supplier reserves the right to alter or amend the Services from time to time without prior notice to the Customer of the alteration or amendment coming into effect.

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

**Subscription Fees:** the subscription fees payable by the Customer to the Supplier for the User Subscriptions, as set out in paragraph 1 of Schedule 1.

**Subscription Term:** has the meaning given in clause 13.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

**Support Services Policy:** the Supplier's policy for providing support in relation to the Services as set out in Schedule 4.

**User Subscriptions:** the user subscriptions purchased by the Customer pursuant to clause 8.1 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.

**Free Content:** means any software that is provided by the supplier which is not part of the services as defined above.

**Nominated User:** means the Authorised User notified to the Supplier by the Customer as main recipient of support from the supplier. By supplying a Nominated User, the Customer asserts that the said Nominated User has the authority to bind the Customer in all dealings and agreements between the Customer and the Supplier. Any information supplied to the Nominated User by the Supplier will be treated as having been supplied to the Customer.

**Pre-Scheduled Activities :** means enhanced support services to include but not limited to, full day training support, half day training support, web chat support, or consultancy services which are not within the Supplier's standard customer support services and which are charged to the Customer by the Supplier as set out in Schedule 1.

- 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) or organisation and that person's legal and personal representatives, successors or permitted assigns.
- 1.4. A reference to a company or organisation shall include any company, corporation or other body corporate or organisation, wherever and however incorporated or established.
- 1.5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7. A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.
- 1.8. A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.
- 1.9. A reference to writing or written includes faxes but not e-mail.

1.10. References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule to this agreement.

## 2. User Subscriptions

2.1. Subject to the Customer purchasing the User Subscriptions in accordance with clause 8.1, the restrictions set out in this clause 2 and the other terms and conditions of this agreement, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sub-licences, to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's organisation's internal operations and solely as specified in the Documentation relating to contact with other relevant organisations and parents, guardians or pupils. Any contact outside the Authorised Users is made at the Customer's sole risk and the Customer warrants to take all care in not sharing any Customer Data in breach of any relevant law including new data protection laws as they come into force or the Data Protection Act 1998 or the General Data Protection Regulations and to indemnify the Supplier from any claim as a result of any transmission of Customer Data to any third party.

2.2. In relation to the Authorised Users, the Customer undertakes that:

- (a) the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number (if relevant) or type of user as agreed between the Supplier and Customer or set out in this agreement;
- (b) it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation;
- (c) each Authorised User shall keep a secure password for his use of the Services and Documentation, such password shall be changed no less frequently than yearly and that each Authorised User shall keep his password confidential and take all reasonable endeavours to ensure that the Services are not accessed by anyone apart from the Authorised User;
- (d) it shall permit the Supplier to audit the Services. Such audit may be conducted no more than once per quarter, at the Supplier's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
- (e) if any of the audits referred to in clause 2.2 (d) reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to the Supplier's other rights, the Customer shall promptly disable such

passwords and the Supplier shall not issue any new passwords to any such individual; and

- (f) if any of the audits referred to in clause 2.2(d) reveal that the Customer has underpaid Subscription Fees to the Supplier, then without prejudice to the Supplier's other rights, the Customer shall pay to the Supplier an amount equal to such underpayment as calculated in accordance with the prices set out in paragraph 1. of Schedule 1 within seven Business Days of the date of the relevant audit.
- (g) It will pay, if relevant, additional charges which may be levied if any of the Audits in clause 2.2(d) or if, for any other reason, it becomes apparent that anyone other than an Authorised User is using the relevant services backdated to the commencement of any services provided and any other costs, fees and expenses reasonably incurred.
- (h) Any restrictions or obligations imposed on the Customer shall be observed by the Authorised Users and it shall be the Customer's responsibility to ensure that all users whether Authorised Users or not act in accordance with such requirements and obligations including but not limited to maintaining the confidentiality of any Customer Data.
- (i) Authorised Users will communicate with the Supplier using the English language.

2.3. The Customer shall not and shall also ensure that Authorised Users or anyone who has access to the Services do not access, store, post, identify itself, 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, vulgar, 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, age, disability; or
- (f) is otherwise illegal or causes or is likely to cause damage or injury to any person or property;

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

2.4. The Customer shall not and shall ensure that Authorised Users or any others to which access to the Services have been given do 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 or by the supplier:
    - (i) attempt to copy, modify, duplicate, create derivative works from, reproduce, print, store, 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
    - (iii) copy Free Content from the software to create or compile any form of collection, compilation, directory or database unless expressly permitted by the supplier
  - (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; save for recording students progress, performing statistical review and delivering presentations to other Authorised Users or external authorities expressly authorised by the Supplier or
  - (d) subject to clause 21.1, 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.; and
  - (f) place a link to the Software other than to the home page of the website [www.pupilasset.com](http://www.pupilasset.com) or deep link without express written authorisation of the Supplier.
  - (g) use the Services and/or Documentation for the purpose of mass-communication such as spam or junk mail.
  - (h) use the Services and/or Documentation to engage in any form of advertising. The customer is not prohibited from referring to another business or organisation for non-promotional purposes where advertising may be incidental.
- 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 the Supplier.

- 2.6. The Customer is responsible for notifying the Supplier if any Authorised Users or passwords are to be revoked immediately together with the details and passwords for any substituted Authorised User.
- 2.7. The Customer is solely responsible for maintaining security of passwords and for all access to and use of any Services by anyone by means of the Customer's or its employees or agents' equipment or the passwords, whether or not the Customer or its Authorised User has knowledge of the same or authorises such use.
- 2.8. The Customer shall use its reasonable endeavours and indemnify the Supplier from any claim in relation to keeping any data and Customer Data stored securely and to preventing any unauthorised Third Party from accessing, copying or duplicating the same.
- 2.9. The Customer agrees to indemnify the Supplier against any use of any passwords supplied or chosen by the Customer or any other user through the Customer including Authorised Users in breach of this Agreement including use by a Third Party.
- 2.10. Any 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 associated organisation of the Customer.

### **3. Services**

- 3.1. The Supplier shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this agreement.
- 3.2. The Supplier 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 during the maintenance window of 10.00 pm to 5.00 am UK time; and
  - (b) unscheduled maintenance performed outside Normal Business Hours.
- 3.3. The Supplier will unless otherwise agreed, as part of the Services and at no additional cost to the Customer unless agreed otherwise in writing provide the Customer through contact with the Nominated User with the Supplier's standard customer support services between the hours of 8am – 5.00pm in accordance with and as defined by the Supplier's current Support Services Policy as set out in schedule 4 in effect at the time that the Services are provided. The Supplier may amend the Support Services Policy in its sole and absolute discretion from time to time. The Supplier reserves the right to respond to queries from Authorised Users through the

Nominated User. The Customer may purchase enhanced support services (Pre-Scheduled Activities) separately at the Supplier's then current rates.

#### **4. Customer data**

- 4.1. The Customer shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 4.2. The Supplier shall so far as is reasonable follow its procedures for Customer Data as set out in its Back-Up Policy as set out in schedule 5, such document may be amended by the Supplier in its sole discretion from time to time. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier in accordance with the Suppliers Back-Up Policy. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by the Supplier and/or any third party.
- 4.3. If the Supplier processes any personal data on the Customer's behalf when performing its obligations under this agreement, the parties record their intention that the Customer shall be the data controller and the Supplier shall be a data processor and in any such case:
  - (a) the Customer acknowledges and agrees that the personal data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to carry out the Services and the Supplier's other obligations under this agreement;
  - (b) the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to the Supplier so that the Supplier may lawfully use, process and transfer the personal data in accordance with this agreement on the Customer's behalf;
  - (c) 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 including the Data Protection Act 1998 and the General Data Protection Regulations so far as any are in force.
  - (d) the Supplier shall process the personal data in accordance with the terms of this agreement and any lawful instructions reasonably given by the Customer from time to time; and
  - (e) 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.

- (f) the Customer acknowledges and agrees that the Supplier reserves the right to monitor any and all Customer Data.

## 5. Third party providers

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

## 6. Supplier's obligations

- 6.1. The Supplier undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 6.2. The undertaking at clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance within a reasonable time, and/or, if deemed appropriate by the Supplier, 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 6.1. Notwithstanding the foregoing, the Supplier:
  - (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.

- (c) is not responsible that some systems/software will not be capable of supporting the Services and that the performance of the Services may vary depending on the equipment and communications facilities used by the Customer.

6.3. This agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement.

## 7. **Customer's obligations**

The Customer shall:

- (a) provide the Supplier with:
  - (i) all necessary co-operation in relation to this agreement; and
  - (ii) all necessary access to such information as may be required by the Supplier;in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
- (b) not supply details or authorise users to anyone not entitled under this Agreement with access to the Services;
- (c) comply with all applicable laws and regulations with respect to its activities under this agreement;
- (d) carry out all other Customer responsibilities set out in this 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, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (e) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this agreement and shall be responsible for any Authorised User's breach of this agreement and ensure that it has adequate security and procedures for protecting the Customer Data;
- (f) obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this agreement, including without limitation the Services;
- (g) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and

- (h) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

## 8. Charges and payment

- 8.1. The Customer shall pay the Subscription Fees to the Supplier for the User Subscriptions in accordance with this clause 8 and Schedule 1 and any enhanced support fees (Pre Scheduled activities) in accordance with clause 3.3 and Schedule 1.
- 8.2. The Customer shall on the Effective Date provide to the Supplier valid, up-to-date and complete credit card details or approved purchase order information acceptable to the Supplier and any other relevant valid, up-to-date and complete contact and billing details and, if the Customer provides:
  - (a) its credit card details to the Supplier, the Customer hereby authorises the Supplier to bill such credit card:
    - (i) on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
    - (ii) subject to clause 13.1, on each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period;
  - (b) its approved purchase order information to the Supplier, the Supplier shall invoice the Customer:
    - (i) on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
    - (ii) subject to clause 13.1, at least 45 days prior to or prior to each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period,
    - (iii) or further to any other agreed basis between the parties made in writing, and the Customer shall pay the Subscription Fees in respect of the Initial Term on the effective date and in respect of any renewal period within 45 days of the date of such invoice referred to in clause 8.2 above.
- 8.3. If the Supplier has not received payment from the Customer within the applicable time periods set out in clauses 8.2 (a) (1) (ii) or 8.2 (i) (ii) (iii) above, and without prejudice to any other rights and remedies of the Supplier:
  - (a) the Supplier may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and the Supplier shall

be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and

- (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 8% over the then current base lending rate of the Bank of England's base rate from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

8.4. All amounts and fees stated or referred to in this agreement:

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

8.5. The Supplier shall be entitled to increase the Subscription Fees, Renewal Fees, and the fees payable in respect of the support fees or enhanced support fees payable pursuant to clause 3.3 upon giving 90 days notice to the Customer and Schedule 1 shall be deemed to have been amended accordingly.

- The Supplier reserves the right to charge the Customer for Pre-Scheduled Activities which are cancelled or postponed by the Customer in the following way:
- The full fee for the Pre-Scheduled Activity if notice is not given by the Customer of their wish to cancel or delay the Pre-Scheduled Activity by no later than 5 full Business Days prior to the Pre-Scheduled Activity commencing.
- 66% of the fee for the Pre-Scheduled Activity if notice is not given by the Customer of their wish to cancel or delay the Pre-Scheduled Activity by no later than 14 full Business days prior to the Pre-Scheduled Activity commencing.

## 9. Proprietary rights

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

9.2. The Supplier confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

## 10. Confidentiality and compliance with policies

- 10.1. Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement (such information includes the terms of this agreement including the financial provisions). 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.
- 10.2. Subject to clause 10.4, 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.
- 10.3. 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.
- 10.4. 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 10.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 10.5. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 10.6. The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.
- 10.7. 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.

- 10.8. The provisions of this clause 10 shall survive termination of this agreement, however arising.
- 10.9. In performing its obligations under this agreement the Customer shall comply with the Mandatory Policies.

## **11. Indemnity**

- 11.1. The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation, provided that:
- (a) the Customer is given prompt notice of any such claim;
  - (b) the Supplier 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.
- 11.2. The Supplier warrants to the Customer that the Services do not infringe any United Kingdom patent effective as of the Effective Date, 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:
- (a) the Supplier is given prompt notice of any such claim;
  - (b) the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
  - (c) the Supplier is given sole authority to defend or settle the claim.
- 11.3. In the defence or settlement of any relevant claim made, the Supplier may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on 5 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 11.4. For the avoidance of doubt, in no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement of any patent is based on:
- (a) a modification of the Services or Documentation by anyone other than the Supplier; or

- (b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by the Supplier; or
  - (c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.
- 11.5. The foregoing and clause 12.3(b) states the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

## 12. Limitation of liability

12.1. 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. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction; and makes no representations and gives no warranties that the Services are suitable for use in educational situations.
- (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.
- (d) The Supplier makes no representation and gives no warranty that the Services will meet the Customers Requirements or be of satisfactory quality or fit for purpose, that it will not infringe third party rights, that it will be compatible with all computer systems, or that it will be secure.
- (e) The Supplier makes no representations and gives no warranties that the Services will be accurate or up to date or that it will provide specific results.
- (f) The Customer acknowledges that the Provision of the Services entails the likelihood of some human and machine errors.

12.2. Nothing in this agreement excludes the liability of the Supplier:

- (a) for death or personal injury caused by the Supplier's negligence; or
- (b) for fraud or fraudulent misrepresentation.

12.3. Subject to clause 12.1 and clause 12.2:

- (a) the Supplier 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) the Supplier's total aggregate liability in contract (including in respect of the potential liability at clause 11.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the total Subscription Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.

### 13. Term and termination

13.1. This agreement shall, unless otherwise terminated as provided in this clause 13, commence on the Effective Date and shall continue for the Initial Subscription Term (for new Customers) or renewal period (for existing Customers) and, thereafter, this agreement shall be automatically renewed for successive periods of 12 months (each a **Renewal Period**), unless:

- (a) The Customer notifies the Supplier 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**.

13.2. 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 21 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 ;
- (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 encumbrance 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 13.2(d) to clause 13.2(j) (inclusive);
- (l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (m) there is a change of control of the other party; or

13.3. Notwithstanding the above, the Supplier reserves the right to terminate this agreement with immediate effect at any time.

13.4. On termination of this agreement for any reason:

- (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;
- (c) the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than 14 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. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). Thereafter, the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession within a reasonable period. The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data; and
- (d) 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.

13.5. On termination of this agreement as a result of the Customers breach of this agreement the Supplier shall be entitled to retain any and all payments made by the customer to the Supplier up to and including the termination of the Subscription Term.

- (a) If the Supplier terminates this agreement for any reason other than those set out in 13.2 (a) – (m) above the Supplier will refund the Customer any remaining balance of the Subscription Fee. Such refund shall be calculated based upon the fee being divided by the number of days in the Subscription term multiplied by the number of days remaining in the Subscription Term.

#### **14. Force majeure**

The Supplier shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

**15. Conflict**

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

**16. Variation**

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

**17. Waiver**

No failure or delay by the Supplier 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.

**18. 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.

**19. Severance**

- 19.1. If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 19.2. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

**20. Entire agreement**

- 20.1. This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 20.2. Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

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

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

## **21. Assignment**

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

21.2. The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

## **22. No partnership or agency**

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

## **23. Third party rights**

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

## **24. Notices**

24.1. Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes, and if sent to the Supplier also copied by email to admin@pupilasset.com as set out in this agreement or any further email address as notified to the Customer by the Supplier.

24.2. 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 3 days after the post mark subject to it being sent by first class post and if sent by second class post at the time at which it would have been delivered in the normal course of post. A notice sent by

email shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender) or the next business day if transmitted outside of normal business hours or on a Saturday, Sunday or public holiday in England.

**25. Governing law**

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

**26. 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).

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

## **1. Subscription Fees**

### **1. Subscription Fees**

The Subscription Fees are set out in the Proposal which should be read in conjunction with these terms and conditions.

### **2. Support Fees**

The Supplier's standard and enhanced support fees are set out in the Proposal which should be read in conjunction with these terms and conditions.

## **2. Subscription Term**

1. Initial Subscription Term: 36 months.

### **3. Policies**

The Mandatory Policies are:

#### **Privacy Policy**

We take care to protect the privacy of customers and users of [www.pupilasset.com](http://www.pupilasset.com). This privacy policy explains how we collect, store and use data about you.

#### **Cookies**

During normal use of [www.pupilasset.com](http://www.pupilasset.com) we collect and store statistical information to analyse how parts of this website are used.

This data is anonymous and contains no personally identifiable data about you. For more information please visit our page about [cookies](#).

#### **Personal data you submit**

On certain pages within this website you have the option to submit personal information to us so that we might send you further information or email alerts. These pages will provide explanations as to how this information is used.

#### **Third parties**

We will not disclose any personal information we collect about you to a third party without your consent. In connection with any application, request or enquiry you make, your information will be passed directly to the relevant contact within the company.

By submitting your personal information through this website, you are consenting to it being processed by Pupil Asset Ltd in the manner described above.

#### **Further information**

If you have submitted personal information through this website and wish us to cease using it for the purposes described above, please contact [support@pupilasset.com](mailto:support@pupilasset.com)

Pupil Asset Ltd. 2017

## Cookies Policy

### What are cookies?

Cookies are tiny unique files that our web-server gives to your computer when you first visit one of our sites, and your web-browser passes back to us with each subsequent page you request so that we don't keep thinking you are a brand new visitor each time. This is essential for various uses, for example to keep you logged in.

Find out more about [cookies](#) and [how to control them](#).

### Pupil Asset uses the following cookies:

#### Pupil Asset Secure Site Cookies

Cookie Name	Purpose
asset	Created on login and passed back to PupilAsset web server each time you request a new page so that we can identify you.

#### Sales Site Cookies

Cookie Name	Provider	Purpose
pupilassetschools	Pupil Asset	Our schools site CMS cookie, to help dynamic content not forget what you have previously requested.
__ga, __ut[*]	Google Analytics	Standard Google Analytics tracking cookies used to help us understand how well our sales and marketing is doing e.g. how many people have visited our sales site, and from which countries.

Google store information on servers in Ireland and the USA. They may transfer this information to third parties where required to do so by law, or where such third parties process the information on Google's behalf. Google will not associate your IP address with any other data held by Google and the data collected is anonymous and does not contain any personal data.

By using our sales website, you consent to the processing of data about you by Google in the manner and for the purposes set out above.

[Read more about Google's Privacy Policy](#)

[Find out more about Google Analytics Cookie Usage on Websites](#)

**Can I turn cookies off?**

You can choose to disable cookies in your browser and delete all cookies currently stored on your computer. Our sales site ([www.pupilasset.com](http://www.pupilasset.com)) will still work, but the secure application won't be able to keep you logged in without them.

Pupil Asset Ltd. 2017

**Incident Escalation Policy****Support Call Escalation**

Pupil Asset Customer Support (Service Desk) aims to resolve all support queries within the first contact.

In the event of your support call not being answered to your expectation, you can escalate any issues to the support team manager.

The dedicated Service Desk telephone number is 01603 631436 (opt 1). RFAs can be logged from within the Pupil Asset MIS and Tracker and our knowledgebase is available at <http://www.Pupil Asset.com/help>.

This section outlines the process for reporting all faults, or raising technical queries, on any part of the Pupil Asset solution. Please also refer to the sections above on the individual services within the solution, for detailed procedures relating to these specific services, including specific contact details.

### **Incident and Problem Reporting**

The following paragraphs detail the responsibilities and procedures to be followed.

The Pupil Asset UK Service Desk is located at:

Pupil Asset Ltd

St. Mary's Croft

No. 13 Chapelfield North

Norwich

NR2 1NY

In the event of a Pupil Asset, or Cloud hosting provider failure, Pupil Asset will inform you.

Pupil Asset and your service desks agree to notify each other if there is any indication the other might not know of an important outage.

### **Reporting an Incident**

When reporting an incident, enquiry, RFA, the reporter will be asked to provide the following specific information wherever possible:

- Site location. – You to provide
- Service component(s) affected. – You to provide
- [LEVEL(s)] action taken. – You to provide
- What are the **EXACT** error messages or precise description of problem? – You to provide
- Can you replicate the error? – You to provide

### **Incident Management**

You will undertake initial [LEVEL(s)] fault diagnosis. After analysis the fault may be passed to the Pupil Asset Service Desk. Pupil Asset LTD. shall retain overall responsibility for the progression and clearance of the incident.

Pupil Asset LTD will allow users to see progress of the reported issue via internal support page. The first update on this page from the Pupil Asset Service Desk to your Service Desk will be within an hour of the incident occurring.

When the incident has been cleared, the Pupil Asset Service Desk will contact you via internal communication to confirm that service has been restored

### **Incident Escalation**

Pupil Asset LTD. operates a jeopardy management process for all incidents, which will automatically initiate escalations at critical points in the incident management process. However, if at any time you are not satisfied with the progress of an incident, you can initiate an escalation via the contacts outlined below:

### **Incident Closure**

It should be noted that confirmation of the incident clearance may be delayed and will need to take into account school holiday periods. When the incident has been resolved any related RFA's will be automatically responded to by an internal communication stating the resolution.

If the service is subsequently found to have not been fully restored, the incident will be unsuspending and the Pupil Asset Service Desk will re-initiate the service restoration process.

### **Maintenance**

#### **Scheduled Maintenance**

There are occasions where it is necessary to undertake planned maintenance work such as upgrades, or preventative maintenance. In such circumstances the Pupil Asset Service Desk will inform you of planned maintenance work via a system message and users with registered emails.

#### **Disaster Recovery Testing Routines**

The Disaster Recovery testing routines will be carried out after a major change.

#### **Unscheduled Maintenance**

There may also be occasions where it is not logistically possible for the Pupil Asset Service Desk to notify you of work being carried out to the service. Throughout the duration of such work, service is of paramount importance and attempts to restore the service will be carried out promptly.

## 2. Change Management

Only the nominated change control representatives for you shall make and sign for change requests. Change control respondents for you are detailed in the table below. In the case of a change being requested by Pupil Asset LTD., the change control respondents during project implementation will be the Project Manager/Co-ordinator, or in-service will be the Sales Director, Account Manager, or the Service Desk Manager.

All changes during the project implementation phase must be co-ordinated and managed through the respective Project Managers.

Name	Position	Email address	Contact Number
<b>Pupil Asset LTD</b>			
Mark Thorby	Change Management	<u><a href="mailto:marl@pupilasset.com">marl@pupilasset.com</a></u>	
<i>All relevant [CUSTOMER] Delivery groups will also be consulted about changes to the solution</i>			
<b>[CUSTOMER]</b>			

## Complaints Procedure Policy

If at any time you feel that the service from Pupil Asset is unsatisfactory and that the specific escalation processes outlined in this document has been unable to rectify the situation you can register a formal complaint. All complaints should be outlined in writing and forwarded to

Lee Tayler

Pupil Asset Ltd

St Marys Croft

13 Chapelfield North

Norwich

NR2 1NY

Or [lee@Pupil Asset.com](mailto:lee@Pupil Asset.com)

All formal complaints will be acknowledged within 24 hours and a formal response to your complaint should be received within 10 working days of receipt.

### Issues Process

In cases where problems re-occur you have the facility to raise an 'Issue', via the Service Desk Manager who holds an Issues Register. The Service Desk Manager will ensure that the issue is resolved to your satisfaction.

Conversely Pupil Asset can raise issues with you who will ensure that clear ownership is identified and resolution agreed with the Service Desk Manager.

Conference calls will be arranged to review the issues list on a regular weekly basis

#### Schedule 4

#### Support Services Policy

- The Supplier will make available support services to the Nominated User only.
- Emails that are submitted to the Supplier by the Customers Nominated User shall be processed between 8.00am and 5.00pm on the Business Day in which they are received.
- Telephone support will be available on 01603 631436 on Business Days within Normal Business Hours so far as reasonably practicable.
- Enhanced support services are available upon request at an additional cost.

#### Service Boundaries

This section defines the demarcation points for Pupil Asset's responsibilities.

	Pupil Asset	[CUSTOMER]	Cluster / School MAT	
Project Management	X			
Service Desk Training	N/A			
1 <sup>st</sup> Level Service Desk	X			X
2 <sup>nd</sup> Level Support	X			
3 <sup>rd</sup> Level Support	X			
Service Administration	N/A			
User Training*	X			X
Contract Management	X			X

\*The school accepts responsibility of continued training of staff in the use of the system

**Service Levels**

<b>Service Element</b>	<b>Service Level</b>	<b>Comments</b>
<b>Service Management</b>		
Availability of Service Desk	Mon-Fri 8am -5pm	(excluding bank holidays)
Response to incidents logged by telephone by Service Provider service desk	Telephones answered in service desk opening hours	
Response to incidents logged by e-mail / portal to Service provider service desk	72 Hours	
<b>Implementation</b>		
Strategic Changes to Service via Change Control	Minor Release- At least fortnightly	
Upgrades to Services	Major Release At least once termly	
Delivery against plan		
<b>Service Performance</b>		
Service Resilience	99.9%	
Security	99.9%	
Full resilience		
Capacity management	Service Provider to report any Pupil Asset service that reaches 70% of capacity.	Except for instances where exceptional one off surge are root cause.

<b>Change Control</b>		
<b>Change Classification</b>	<b>Change Type</b>	<b>Service Provider SLA</b>

<b>Operational Changes</b>		
Operational	Fast Track/ Emergency	24 Hours
Operational	Standard	At least fortnightly
<b>Commercial Changes</b>		
Commercial	Standard	At least once a year, at most, once term
Commercial	Complex	On agreement/Annually
Commercial	Major project/ Bespoke work	On Agreement

**Pupil Asset Service Level Agreement and Incident Escalation**

Pupil Asset LTD undertakes to operate a Customer Support Service Desk, having suitably skilled support staff available from 8:00 a.m. to 5:00 p.m. GMT/BST, Monday to Friday excluding English Bank Holidays, to log Requests For Assistance (RFA) and to deal promptly with problems encountered by Pupil Asset’s users of the service.\*

\* NOTE: Pupil Asset LTD’s MIS and Tracker service includes the ability to log FDA’s through our online self-service incident logging system.

The impact and severity of a reported fault or problem will be evaluated and discussed with customer during the initial contact. The severity of the problem will then be decided by Pupil Asset. Once decided, the issue will be logged and scheduled in conjunction with the development team and assigned to a release.

**Critical** – A problem, which must be resolved before customer can continue normal business operations.

If a workaround is available, Pupil Asset’s support staff will use best endeavours to respond to customer with a workaround within four (4) working hours of receiving notice of a critical problem being reported

**Serious** – A problem, which significantly inhibits production but does not prevent operations.

Pupil Asset’s support staff will use best endeavours to respond to customer with a workaround within 2 working days of receiving notice of a serious problem being reported.

**Moderate** – Requirements, which do not impede productive use of the Software.

Pupil Asset's support staff will use best endeavours to respond to customer with a workaround within 3 working days of a moderate problem being reported.

**Minor** – Cosmetic production problems and general test system problems that do not affect availability of the production system. This severity level will also be used to categorise general technical Service Desk types of RFAs.

Pupil Asset's support staff will respond to customer within two (2) working weeks of a minor problem being reported, or if relevant in the next version release.

\*Pupil Asset reserves the right to change moderate and minor rated issues dependant on resourcing constraints.

## Schedule 5

### Disaster recovery and Back Up Policy

Pupil Asset has a fully documented Disaster Recovery policy aligned to the ISO/IEC 27001:2013 standards.

The Pupil Asset Management Information System (MIS) is a fully Cloud-based Software-as-a-Service (SaaS) and therefore hosted remotely from the client(s) site(s). We take security and data protection legislation extremely seriously and for this reason we have chosen to use two United Kingdom located Cloud hosting Infrastructure-as-a-Service (IaaS) providers.

We ensure data confidentiality, integrity and availability through a robust combination of policies, processes and independent evaluation.

Data is hosted in and does not leave the European Economic Area (EEA).

Rackspace and Bytemark provide our Cloud hosting. Relevant accreditations include Crown Commercial Services (formerly G-Cloud) framework provider, PSI DSS, ISO/IEC 27001 Information Security Management, ISO 9001 Quality Management and ISO 14001 Environmental Management.

The approach to our Cloud hosting architecture affords us excellent resilience in the context of Business Continuity, Disaster Recovery (DR) and High Availability (HA). We have chosen two different Cloud infrastructure suppliers based in geographically separate locations to maximise failover and load balance options. Pupil Asset LTD follow the ISO/IEC 27001:2013 – Information Security Management standard. This means that we have to maintain a relevant Business Continuity and Disaster Recovery Plan. This plan is subject to regular internal review. We have an Information Security Management System (ISMS) group which meets regularly and by exception. The ISMS group includes Director level membership.

As part of this methodology, recovery exercises are performed on a regular basis simulating disaster recovery scenarios. In the rare event that a system failure does occur, in conjunction with our Cloud hosting providers, we use an aggressive, root cause analysis process to deeply understand the cause. Implementation of improvements learned from such an event is a top priority for us. We will provide post-mortems for every customer-impacting incident upon request, should one occur.

Furthermore, Business Continuity and Disaster Recovery feature in our day-to-day operational processes as part of our commitment to excellent IT service management through the adoption and embedding of the ITILv3 framework for IT support.

We conduct tests against our Business Continuity and Disaster Recovery plans at least annually, after a significant change and release and in event of something such as an office move.

Our MIS service including the infrastructure to support it, together with our Information Security Management System (ISMS) and related policies and procedures are independently audited at least annually, or after a major change.

Pupil Asset LTD is registered with the Information Commissioner's Office (ICO) and comply purpose of compliance with the Data Protection Act (DPA) legislation. Our registration number is: Z259587X. We also subscribe to the ICO news feeds including Decision Notices, News and Enforcement (see <https://ico.org.uk/global/rss-feeds/> for more information). We have a number of employees fully trained in the DPA (and forthcoming GDPR) and Freedom of Information Act (FOI) and responsible for ensuring that all Pupil Asset employees understand their obligations.

Pupil Asset are actively involved with DfE groups including MIS and Data working groups and subscribe to the various information feeds including for data privacy and security. As a Cloud SaaS provider, we actively encourage schools to review the latest DfE guidance (10/2014 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/526825/Cloud-services-software.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/526825/Cloud-services-software.pdf)) for schools wanting to embrace Cloud services and of course ensure that all of our services meet the latest regulation and advice.

### **Backups at Pupil Asset**

The entire of Pupil Asset is cloned overnight, every night, to two locations physically distinct from the core data centre in Manchester.

We keep backup information for up to three years (or longer, if there is a valid business requirement) and have procedures for the restoration of information should that be absolutely required by a school or group.

Signed by [NAME OF  
DIRECTOR] for and on  
behalf of [NAME OF  
SUPPLIER]

.....  
Director

Signed by [NAME OF  
DIRECTOR] for and on  
behalf of [NAME OF  
CUSTOMER]

.....  
Director