

Thinking Matters Terms of Business

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 8 (LIMITATION OF LIABILITY).

1. Interpretation

1.1 Definitions:

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

Charges: the charges payable by the Customer for the supply of the Services by the Supplier, as set out in the Engagement Letter.

Conditions: these terms and conditions set out in clause 1 (Interpretation) to clause 9 (General) (inclusive).

Contract: the contract between the Customer and the Supplier for the supply of the Services in accordance with the Engagement Letter and these Conditions.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.

Customer: the person or firm who purchases Services from the Supplier.

Deliverables: all documents, materials, information and presentations developed by the Supplier or its agents, subcontractors and personnel as part of or in relation to the Services in any form including, but not limited to, the course materials (hardcopy and online).

Engagement Letter: the covering letter addressed to the Customer.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Services: the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Engagement Letter.

Services Start Date: the day on which the Supplier is to start provision of the Services, as set out in the Engagement Letter.

Supplier: Thinking Matters Holdings Ltd registered in England and Wales with company number 7698927.

1.2 **Interpretation:**

1.2.1 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision includes any subordinate legislation made from time to time under that statute or statutory provision.

1.2.2 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.2.3 A reference to **writing** or **written** includes fax and email.

2. **Commencement**

2.1 The Contract shall commence on the date when the Engagement Letter has been signed by both parties or the Services Start Date, whichever is the earlier.

3. **Supply of services**

3.1 The Supplier shall supply the Services to the Customer from the Services Start Date in accordance with the Contract.

3.2 In supplying the Services, the Supplier shall:

3.2.1 perform the Services with reasonable care and skill;

3.2.2 use reasonable endeavours to perform the Services in accordance with the service description set out in the Engagement Letter;

3.2.3 use reasonable endeavours to meet any performance dates specified in the Engagement Letter, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services; and

3.2.4 observe all reasonable health and safety rules and regulations and security requirements that apply at any of the Customer's premises and have been communicated to the Supplier, provided that the Supplier shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract.

4. **Customer's obligations**

4.1 The Customer shall:

- 4.1.1 co-operate with, and ensure that its staff co-operate with, the Supplier in all matters relating to the Services;
 - 4.1.2 provide, for the Supplier, its agents, subcontractors, consultants and employees, access to the Customer's premises, office accommodation, data and other facilities as reasonably required by the Supplier or any of them;
 - 4.1.3 provide, in a timely manner, such information as the Supplier may reasonably require in order to supply the Services, and ensure that it is accurate and complete in all material respects; and
 - 4.1.4 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start.
- 4.2 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees (**Customer Default**), the Supplier shall:
- 4.2.1 have the right (without limiting or affecting any other right or remedy available to it) to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
 - 4.2.2 not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay;
 - 4.2.3 be entitled to recover any additional costs, charges or losses the Supplier sustains or incurs that arise directly or indirectly from such prevention or delay.

5. Intellectual property

- 5.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier of its licensors.
- 5.2 The Supplier grants the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free, licence to use and access the Deliverables (excluding materials provided by the Customer) for the sole purpose of receiving and using the Services and the Deliverables in the Customer's business during the term of the Contract.
- 5.3 For the avoidance of any doubt, the licence granted in clause 5.2 does not grant the Customer, or any of its staff, the right to use the Deliverables outside the school, or group of schools, covered by this agreement, whether for commercial gain or otherwise.
- 5.4 The Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 5.2.

5.5 The Customer grants the Supplier a fully paid-up, worldwide, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer in accordance with the Contract.

6. Charges and payment

6.1 In consideration for the provision of the Services, the Customer shall pay the Supplier the Charges in accordance with this clause 6.

6.2 The Supplier shall be entitled to charge for additional support provided to the Customer, calculated on a time and materials basis in accordance with the Supplier's daily fee rates from time to time. The Supplier shall also be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the additional support including travelling expenses, hotel costs, subsistence and any associated expenses.

6.3 All amounts payable by the Customer exclude amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to receipt of a valid VAT invoice.

6.4 The Supplier shall submit invoices for the Charges plus VAT to the Customer at the intervals specified in the Engagement Letter. Each invoice shall include all reasonable supporting information required by the Customer.

6.5 The Customer shall pay each invoice due and submitted to it by the Supplier, within 30 days of receipt, to a bank account nominated in writing by the Supplier.

6.6 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then, without limiting the Supplier's remedies under clause 8 (Termination):

6.6.1 the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

6.6.2 the Supplier may suspend all Services until payment has been made in full.

6.7 All amounts due under the Contract from the Customer to the Supplier shall be paid by in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

7. Limitation of liability

7.1 References to liability in this clause 7 include every kind of liability arising under or in connection with the Contract including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

- 7.2 Nothing in this clause 7 shall limit the Customer's payment obligations under the Contract.
- 7.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- 7.3.1 death or personal injury caused by negligence;
 - 7.3.2 fraud or fraudulent misrepresentation; and
 - 7.3.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 7.4 Subject to clause 7.2 (No limitation on customer's payment obligations), and clause 7.3 (Liabilities which cannot legally be limited) the Supplier's total liability to the Customer shall not exceed the total Charges payable under the Contract.
- 7.5 Subject to clause 7.2 (No limitation on customer's payment obligations) and clause 7.3 (Liabilities which cannot legally be limited), this clause 7.5 sets out the types of loss that are wholly excluded:
- 7.5.1 loss of profits;
 - 7.5.2 loss of sales or business;
 - 7.5.3 loss of opportunity, agreements or contracts;
 - 7.5.4 loss of anticipated savings;
 - 7.5.5 loss of use or corruption of software, data or information;
 - 7.5.6 loss of or damage to goodwill; and
 - 7.5.7 indirect or consequential loss.
- 7.6 The Supplier has given commitments as to compliance of the Services with relevant specifications in clause 3. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

8. Termination

- 8.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party 60 (sixty) days written notice.
- 8.2 Without affecting any other right or remedy available to it, either party to the Contract may terminate it with immediate effect by giving written notice to the other party if:

- 8.2.1 the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
 - 8.2.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
 - 8.2.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - 8.2.4 the other party's financial position deteriorates to such an extent that in the terminating party's reasonable opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 8.3 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 8.4 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Customer and the Supplier if:
- 8.4.1 the Customer fails to pay any amount due under the Contract on the due date for payment;
 - 8.4.2 the Customer becomes subject to any of the events listed in clause 8.2.3 or clause 8.2.4, or the Supplier reasonably believes that the Customer is about to become subject to any of them; and
 - 8.4.3 the Supplier reasonably believes that the Customer is about to become subject to any of the events listed in clause 8.2.2.
- 8.5 On termination of the Contract for whatever reason:
- 8.5.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted or a balance is due, the Supplier may submit an invoice, which shall be payable immediately on receipt;
 - 8.5.2 any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect; and
 - 8.5.3 termination or expiry of the Contract shall not affect any of the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of

termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

9. General

9.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

9.2 Assignment and other dealings.

9.2.1 The Customer shall not assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract without the Supplier's prior written consent.

9.2.2 The Supplier may at any time assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights under the Contract.

9.3 Confidentiality.

9.3.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group to which the other party belongs, except as permitted by clause 9.3. For the purposes of this clause 9.3, group means, in relation to a party, that party, any subsidiary or holding company from time to time of that party, and any subsidiary from time to time of a holding company of that party. For the avoidance of doubt, the Deliverables will constitute confidential information of the Supplier.

9.3.2 Each party may disclose the other party's confidential information:

- (i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 9.3; and
- (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

9.3.3 Neither party shall use any other party's confidential information for any purpose other than to perform its obligations under the Contract.

9.4 Entire agreement.

- 9.4.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 9.4.2 Each party acknowledges that in entering into the Contract 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 the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 9.5 **Variation.** No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 9.6 **Waiver.**
- 9.6.1 A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 9.6.2 A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 9.7 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 9.7 shall not affect the validity and enforceability of the rest of the Contract.
- 9.8 **Notices.**
- 9.8.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
- 9.8.2 Any notice shall be deemed to have been received:
- (i) if delivered by hand, at the time the notice is left at the proper address; or
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting.

9.8.3 This clause 9.8 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

9.8.4 A notice given under the Contract is not valid if sent by email.

9.9 **Third party rights.**

9.9.1 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

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

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