

LEARNING MANAGEMENT SYSTEM CONDITIONS

1 INTERPRETATION

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

Agreement	the contract between the Supplier and the Customer for the supply of the LMS Services in accordance with the Quotation and these Conditions.
Authorised Users	those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the LMS Services.
Business Day	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
Commencement Date	the date specified in the Quotation.
Conditions	these terms and conditions as amended from time to time in accordance with clause 16.1.
Confidential Information	all confidential information (however recorded or preserved) disclosed by a party to the other party which information is either labelled as such or should reasonably be considered as confidential because of its nature and the manner of its disclosure.
Customer Data	the data inputted by the Customer, Authorised Users, or the Supplier on the Customer's behalf for the purpose of using the LMS Services or facilitating the Customer's use of the LMS Services.
Data Protection Legislation	all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications). The terms controller, processor, personal data and processing shall be as defined in the Data Protection Legislation.
Intellectual Property Rights	patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), 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.
LMS	learning management system.
LMS Fees	the subscription fees payable by the Customer to the Supplier for the User Subscriptions, as set out in the Quotation.
LMS Initial Term	the initial term set out in the Quotation.
LMS Services	the services provided by the Supplier to the Customer under this Agreement via lms.adopt365.co.uk or any other website notified to the Customer by the Supplier from time to time, as more particularly described in the Quotation.
LMS Software	means the online LMS software provided by the Supplier as part of the LMS Services.
LMS Successive Term	shall have the meaning given to it in clause 13.1.
LMS Term	the LMS Initial Term and any LMS Successive Term.

Quotation the Quotation to which these Conditions are attached.

Relevant LMS Period means the LMS Initial Term or the LMS Successive Term.

Supplier KASCADE is a trading name of ComputerWorld (Systems) Limited whose registered number is 04625112 and whose registered office is at Apex House, Turner Drive, Westerleigh Business Park, Bristol, BS37 5YX.
Throughout this Agreement, references to Kascade shall also include Computerworld (Systems) Limited. Computerworld (Systems) Limited and Kascade are used interchangeably to represent our business and services.

UK GDPR has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

User Subscription the user subscriptions purchased by the Customer pursuant to clause 8.1 which entitle Authorised Users to access and use the LMS Services in accordance with this Agreement.

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

1.2 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

1.3 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.

1.4 A reference to writing or written includes email.

1.5 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

2 BASIS OF CONTRACT

2.1 The Quotation constitutes an irrevocable offer by the Customer to purchase the LMS Services from the Supplier in accordance with this Agreement.

2.2 The Quotation shall only be deemed to be accepted when the Supplier issues written acceptance of the Quotation at which point and on which date the Agreement shall come into existence.

2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the LMS Services described in them. They shall not form part of the Agreement or have any contractual force.

2.4 These Conditions shall apply to the Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.5 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 15 Business Days from its date of issue.

3 GRANT AND SCOPE OF LICENCE AND LMS SERVICES

3.1 Subject to the Customer purchasing the User Subscriptions in accordance with clause 8.1 and clause 5.3, the restrictions set out in clause 4 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 sublicences, to permit the Authorised Users to use the LMS Services during the LMS Term solely for the Customer's internal business operations.

3.2 The Supplier shall, during the LMS Term, provide the LMS Services to the Customer on and subject to the terms of this Agreement.

3.3 The Supplier undertakes that the LMS Services will be performed with reasonable skill and care.

3.4 Subject to clause 12.1.1.1, the Supplier shall use commercially reasonable endeavours to make the LMS Services available 24 hours a day, seven days a week during the LMS Term, except for any periods where maintenance is carried out, which, in the case of routine maintenance will be carried out, where practically possible, during the maintenance window of 5.00 am to 6.00 am UK time.

Adopt 365 Terms and Conditions

- 3.5 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.
- 4 RESTRICTIONS**
- 4.1 In relation to the Authorised Users, the Customer undertakes that:
- 4.1.1 the maximum number of Authorised Users that it authorises to access and use the LMS Services shall not exceed the number of User Subscriptions it has purchased from time to time;
- 4.1.2 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 LMS Services;
- 4.1.3 each Authorised User shall keep a secure password for their use of the LMS Services and that each Authorised User shall keep their password confidential;
- 4.1.4 it shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier within 5 Business Days of the Supplier's written request at any time or times;
- 4.1.5 it shall permit the Supplier or the Supplier's designated auditor to audit:
- 4.1.5.1 the LMS Services in order to establish the name and password of each Authorised User; and
- 4.1.5.2 the Customer's data processing facilities to audit compliance with this Agreement, each such audit may be conducted no more than once per year, 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;
- 4.1.6 if any of the audits referred to in clause 4.1.5 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
- 4.1.7 if any of the audits referred to in clause 4.1.5 reveal that the Customer has underpaid LMS 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 the Quotation or as otherwise notified by the Supplier to the Customer within 10 Business Days of the date of the relevant audit.
- 4.2 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the LMS Services that:
- 4.2.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- 4.2.2 facilitates illegal activity;
- 4.2.3 depicts sexually explicit images;
- 4.2.4 promotes unlawful violence;
- 4.2.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- 4.2.6 is otherwise illegal or causes 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.
- 4.3 The Customer shall not:
- 4.3.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement:
- 4.3.1.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the LMS Software in any form or media or by any means; or
- 4.3.1.2 attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the LMS Software; or
- 4.3.2 access all or any part of the LMS Services in order to build a product or service which competes with the LMS Services; or
- 4.3.3 use the LMS Services to provide LMS Services to third parties; or
- 4.3.4 subject to clause 16.5, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the
- LMS Services available to any third party except the Authorised Users, or
- 4.3.5 attempt to obtain, or assist third parties in obtaining, access to the LMS Services, other than as provided under this clause 4; or
- 4.3.6 introduce or permit the introduction of, any Virus into the Supplier's network and information systems.
- 4.4 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the LMS Services and, in the event of any such unauthorised access or use, promptly notify the Supplier.
- 5 ADDITIONAL USER SUBSCRIPTIONS**
- 5.1 Subject to clause 5.2 and clause 5.3, the Customer may, from time to time during any LMS Term, purchase additional User Subscriptions in excess of the number set out in the Quotation and the Supplier shall grant access to the LMS Services to such additional Authorised Users in accordance with the provisions of this Agreement.
- 5.2 If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify the Supplier in writing. The Supplier shall evaluate such request for additional User Subscriptions and respond to the Customer with approval or rejection of the request. Where the Supplier approves the request, the Supplier shall activate the additional User Subscriptions as soon as practicable following its approval of the Customer's request.
- 5.3 If the Supplier approves the Customer's request to purchase additional User Subscriptions, the Customer shall, within 15 days of the date of the Supplier's invoice, pay to the Supplier the relevant fees for such additional User Subscriptions as set out in the Quotation or as otherwise notified by the Supplier to the Customer and, if such additional User Subscriptions are purchased by the Customer part way through the LMS Initial Term or any LMS Successive Term (as applicable), such fees shall be pro-rated from the date of activation by the Supplier for the remainder of the LMS Initial Term or any LMS Successive Term (as applicable).
- 6 CUSTOMER'S OBLIGATIONS**
- 6.1 The Customer shall:
- 6.1.1 provide the Supplier with:
- 6.1.1.1 all necessary co-operation in relation to this Agreement; and
- 6.1.1.2 all necessary access to such information as may be required by the Supplier; in order to provide the LMS Services, including but not limited to Customer Data, security access information and configuration LMS Services;
- 6.1.2 without affecting its other obligations under this Agreement, comply with all applicable laws and regulations with respect to its activities under this Agreement;
- 6.1.3 carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner;
- 6.1.4 ensure that the Authorised Users use the LMS Services in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;
- 6.1.5 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 LMS Services;
- 6.1.6 ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- 6.1.7 be, to the extent permitted by law and except as otherwise expressly provided in this Agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to 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.
- 6.2 The Customer shall own all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.
- 6.3 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 LMS Services, provided that:
- 6.3.1 the Customer is given prompt notice of any such claim;
- 6.3.2 the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
- 6.3.3 the Customer is given sole authority to defend or settle the claim.
- 7 THIRD PARTY PROVIDERS**
- The Customer acknowledges that the LMS Services may enable or assist it to access the website content of, correspond with, and purchase products and LMS 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. 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 LMS Services.
- 8 CHARGES AND PAYMENT**
- 8.1 The Customer shall pay the LMS Fees to the Supplier for the User Subscriptions in accordance with this clause 8 and the Quotation.
- 8.2 The Customer acknowledges that the Supplier may apply a discount to the LMS Fees payable by the Customer to the Supplier in respect of the LMS Initial Term, as specified in the Quotation. Following expiry of the LMS Initial Term, in cases where the Supplier has applied a discount to the LMS Fees, the Supplier reserves the right to charge the Customer the LMS Fees due in respect of any LMS Successive Term in full without applying any discount.
- 8.3 Unless otherwise set out in the Quotation, the Customer shall pay each invoice submitted by the Supplier:
- 8.3.1 within 15 days of the date of the invoice; and
- 8.3.2 in full and in cleared funds to a bank account nominated in writing by the Supplier, and
- 8.3.3 time for payment shall be of the essence of the Agreement.
- 8.4 All amounts payable by the Customer under the Agreement are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Agreement by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the LMS Services at the same time as payment is due for the supply of the LMS Services.
- 8.5 If the Customer fails to make a payment due to the Supplier under the Agreement by the due date, then, without limiting the Supplier's remedies under clause 13:
- 8.5.1 the Supplier may, without liability to the Customer, disable the Customer's password, account and access to all or part of the LMS Services and the Supplier shall be under no obligation to provide any or all of the LMS Services while the invoice(s) concerned remain unpaid;
- 8.5.2 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 8.5 will accrue each day at 1.5% per month or the maximum rate permitted by law; and
- 8.5.3 the Customer shall pay the Supplier for its reasonable and necessary costs of collection incurred, including, without limitation, reasonable legal fees and the Supplier's costs of disconnecting and reconnecting the Customer for non-payment.
- 8.6 All amounts due under this Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 8.7 The Supplier reserves the right to increase the LMS Fees on an annual basis with effect from each anniversary of the Commencement Date (**Review Date**) by the higher of 3% and the percentage increase in the Consumer Prices Index (CPI) over the twelve months prior to the relevant Review Date.
- 9 PROPRIETARY RIGHTS**
- 9.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all Intellectual Property Rights in the LMS Services. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, under or in, any Intellectual Property Rights, or any other rights or licences in respect of the LMS Services.
- 9.2 The Supplier confirms that it has all the rights in relation to the LMS Services that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.
- 10 DATA PROTECTION**
- 10.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 10 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Data Protection Legislation.
- 10.2 The parties have determined that, for the purposes of the Data Protection Legislation, the Supplier shall act as controller of any personal data of the Customer or any Authorised User which the Supplier processes in connection with this Agreement.
- 10.3 By entering into this Agreement, the Customer consents to (and shall procure all required consents from its Authorised Users in respect of) all actions taken by the Supplier in connection with the processing of any personal data, provided these are in compliance with the then-current version of the Supplier's privacy policy available at <https://www.kascade.co.uk/terms/privacy-policy>. In the event of any inconsistency or conflict between the terms of the Privacy Policy and this Agreement, the Privacy Policy will take precedence.
- 11 CONFIDENTIALITY**
- 11.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:
- 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; or
- 11.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence.
- 11.2 Subject to clause 11.4, 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.
- 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 this Agreement.
- 11.4 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 11.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 11.5 The Customer acknowledges that details of the LMS Services, and the results of any performance tests of the LMS Services, constitute the Supplier's Confidential Information.
- 11.6 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.
- 11.7 Subject to clause 11.8, no party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other party (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.
- 11.8 The Supplier may use the Customer's name or branding in any promotional materials, marketing materials, similar materials or announcements relating to the LMS Services without the Customer's prior written consent.
- 11.9 The above provisions of this clause 11 shall survive termination of this Agreement, however arising.
- 12 LIMITATION OF LIABILITY**
- 12.1 The Supplier:
- 12.1.1 does not warrant that:
- 12.1.1.1 the Customer's use of the LMS Services will be uninterrupted or error-free;
- 12.1.1.2 that the LMS Services and/or the information obtained by the Customer through the LMS Services will meet the Customer's requirements; or
- 12.1.1.3 the LMS Software or the LMS Services will be free from Viruses;
- 12.1.2 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 LMS Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 12.2 Except as expressly and specifically provided in this Agreement:
- 12.2.1 the Customer assumes sole responsibility for results obtained from the use of the LMS Services 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 LMS Services, or any actions taken by the Supplier at the Customer's direction;
- 12.2.2 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 this Agreement; and
- 12.2.3 the LMS Services are provided to the Customer on an "as is" basis.
- 12.3 Nothing in this Agreement excludes the liability of the Supplier:
- 12.3.1 for death or personal injury caused by the Supplier's negligence; or
- 12.3.2 for fraud or fraudulent misrepresentation.
- 12.4 Subject to clause 12.3:
- 12.4.1 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
- 12.4.2 the Supplier's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited:
- 12.4.2.1 in the first 12 months of the LMS Term, to the LMS Fees payable in respect of that first 12 months (or that would otherwise have been payable but for any discount applied pursuant to clause 8.2), such LMS Fees to be calculated by reference to the number of User Subscriptions on the Commencement Date; and
- 12.4.2.2 thereafter to the total LMS Fees paid (or that would otherwise have been payable but for any discount applied pursuant to clause 8.2) for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.
- 12.5 Nothing in this Agreement excludes the liability of the Customer for any breach, infringement or misappropriation of the Supplier's Intellectual Property Rights.
- 13 TERM AND TERMINATION**
- 13.1 This Agreement shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with its terms, for the LMS Initial Term. Thereafter it shall renew automatically for successive terms which shall be equal to the period of the LMS Initial Term (each a **LMS Successive Term**), such LMS Successive Term commencing on the day after the expiry of the LMS Initial Term or relevant LMS Successive Term (as the case may be) unless:
- 13.1.1 Subject to clause 13.2, the Customer gives to the Supplier 60 days' advance notice to terminate this Agreement;
- 13.1.2 the Supplier gives to the Customer 15 days' advance notice to terminate this Agreement, such that this Agreement shall terminate on the final day of the then current LMS Initial Term or LMS Successive Term (as the case may be).
- 13.2 Where the Relevant LMS Period of the Agreement is 1 month, the Customer shall be entitled to terminate this Agreement on giving to the Supplier 30 days' advance notice, such notice to expire on the last day of the then current LMS Initial Term or LMS Successive Term, such that this Agreement shall terminate on the final day of the then current LMS Initial Term or LMS Successive Term (as the case may be).
- 13.3 Where the Relevant LMS Period is one year or more, without affecting any other right or remedy available to it, the Supplier may terminate this Agreement at any time and for any reason by giving 6 months' written notice to the Customer.
- 13.4 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:
- 13.4.1 the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 15 days after being notified in writing to make such payment;
- 13.4.2 the other party commits a material breach of any other term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- 13.4.3 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;
- 13.4.4 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;
- 13.4.5 the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- 13.4.6 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;
- 13.4.7 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 (being a company, partnership or limited liability partnership);
- 13.4.8 the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- 13.4.9 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;
- 13.4.10 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- 13.4.11 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 13.4.3 to 13.4.10 (inclusive);
- 13.4.12 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- 13.4.13 the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Agreement is in jeopardy.
- 13.5 On termination of this Agreement for any reason:
- 13.5.1 all licences granted under this Agreement shall immediately terminate and the Customer shall (and shall procure that its Authorised Users shall) immediately cease all use of the LMS Services;
- 13.5.2 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; and
- 13.5.3 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.
- 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, epidemic or pandemic, 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 NOTICES**
- 15.1 Any notice given to a party under or in connection with this Agreement 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); or sent by email to the address specified in the Quotation.
- 15.2 Any notice shall be deemed to have been received:
- 15.2.1 if delivered by hand, at the time the notice is left at the proper address;
- 15.2.2 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; or
- 15.2.3 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 15.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 15.3 This clause 15 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 16 GENERAL**
- 16.1 The Supplier may vary this Agreement on giving notice to the Customer. Where the Customer proposes to vary this Agreement, no such variation shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 16.2 No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 16.3 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement. If any provision or part-provision of this Agreement is deemed deleted under this clause 16.3 the parties shall negotiate

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in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

- 16.4 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. 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.
- 16.5 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. 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.
- 16.6 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.
- 16.7 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.
- 16.8 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).