

# Prime Principle Limited’s online Classroom Monitor access terms and conditions

## 1 Interpretation

1.1 The definitions and rules of interpretation in this condition 1 apply in these conditions:

“Agreement”	the contract between you and us for access to the Services, incorporating the Order Form and these conditions;
“Apps”	our applications available at Google playstore and Apple appstore;
“Authorised Pupil Limit”	the number of individual pupils as stated on the Order Form;
“Authorised Users”	those of your employees and independent contractors who you authorise to use the Services under this Agreement up to the maximum number we agree with you in the Order Form;
“Business Day”	any day which is not a Saturday, Sunday or public holiday in England;
“Classroom Monitor Software”	our proprietary software known as “Classroom Monitor” as described for information purposes only on our Website and our User Guide, including any error corrections, updates, upgrades, modifications and enhancements to it provided to you under the Agreement;
“Confidential Information”	information that is proprietary or confidential and is either: (a) clearly labelled as such; or (b) identified as such in clause 13.5 or clause 13.6;
“Effective Date”	the date we write to you accepting your order pursuant to the Order Form;
“Maintenance and Support”	any error corrections, updates and upgrades that we may provide or perform with respect to the Classroom Monitor Software and Subscription Services as described for information purposes only in our User Guide, and provided in accordance with clauses 4.3 to 4.5 (inclusive). For the avoidance of doubt, any additional technical support, training, or consultancy that we provide shall be subject to our agreement and payment by you of any additional applicable fee;
“Normal Business Hours”	9.00 am to 5.00 pm local UK time, Monday to Friday, excluding public holidays;
“Order Form”	our standard order form;

“Services”	the Subscription Services and/or Maintenance and Support as applicable, given the context in which the term “Services” is used;
“Subscription Services”	the services that we provide to allow your Authorised Users to access and use the Classroom Monitor Software through our Website and/or our Apps, including hosting set-up and ongoing services, all as described for information purposes only in our User Guide;
“User Guide”	our user training guide available at <a href="http://www.classroommonitortraining.weebly.com">www.classroommonitortraining.weebly.com</a> as may be updated from time to time;
“Website”	our website available at <a href="http://www.classroommonitor.co.uk">www.classroommonitor.co.uk</a> and <a href="http://www.classroommonitor-online.co.uk">www.classroommonitor-online.co.uk</a> ;
“we”, “us” and “our”	Prime Principle Limited, company number 05112203, whose registered office is at 30 Woolpack Lane, Nottingham, NG1 1GA;
“you” and “your”	the school or other organisation named on the Order Form; and
“Your Data”	the data, including, but not limited to, assessment criteria, input into the information fields of the Classroom Monitor Software by you, your Authorised Users, or by us on your behalf.

- 1.2 Clause and paragraph headings shall not affect the interpretation of these conditions.
- 1.3 A person includes a corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Words in the singular shall include the plural and vice versa.
- 1.6 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 for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.8 A reference to writing or written does not include fax but includes email.

## 2 Application of these conditions

2.1 These conditions shall:

- 2.1.1 apply to and be incorporated into the Agreement; and

- 2.1.2 prevail over any inconsistent terms or conditions contained, or referred to, in your purchase order, confirmation of order, acceptance of a quotation, or specification or other document supplied by you, or implied by law, trade custom, practice or course of dealing.
- 2.2 Your submission of the Order Form, any other purchase order, or your acceptance of our quotation, constitutes an offer by you to purchase the Services on these conditions. No offer you place shall be accepted by us other than by a written acknowledgement issued and executed by us.

### 3 Subscription Services

- 3.1 Subject to you paying all fees due and owing under this Agreement and complying with the terms of this Agreement, we grant to you, from the Effective Date, a non-exclusive, non-transferable right to permit the Authorised Users to use the Services during the term of this agreement solely for your internal business operations.
- 3.2 You shall make your own, and shall ensure that your Authorised Users shall make their own, arrangements for internet access in order to access the Subscription Services.
- 3.3 Subject to clause 3.4, we shall use commercially reasonable endeavours to achieve no less than 99% availability of the Subscription Services for your use in accordance with this Agreement.
- 3.4 Where downtime in excess of the level set out in clause 3.3 is unavoidable (normally only in situations where substantial maintenance is required), we will give you as much notice of such downtime as possible and will endeavour to work with you to schedule the downtime to minimise the impact on your use of the Subscription Services.
- 3.5 We shall provide release management services to ensure that new releases, patch releases and other updates are implemented as we deem necessary to maintain the Subscription Services. For the avoidance of doubt, updates which are necessary to maintain your access and use of the Subscription Services will be supplied free of charge.
- 3.6 In relation to the Subscription Services:
- 3.6.1 we hereby grant to you on and subject to the terms and conditions of the Agreement a non-exclusive, non-transferable licence to allow your Authorised Users to access the Classroom Monitor Software through the Subscription Services and to use the Subscription Services solely for the purpose of assessment and report writing procedures in relation to classes up to the Authorised Pupil Limit;
- 3.6.2 you shall not, and shall procure that your Authorised Users shall not, store, distribute or transmit any viruses or any material through the Subscription Services that is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities;
- 3.6.3 you shall not, and shall procure that your Authorised Users shall not, input any data or provide any data to us for inputting into the Classroom Monitor Software that infringes the intellectual property rights of any third party;

- 3.6.4 the right provided under clause 3.6.1 is granted to you only, and shall not be considered granted to any subsidiary, or holding company of yours or any associated school; and
- 3.6.5 you shall not, and shall procure that your Authorised Users shall not:
  - 3.6.5.1 attempt to duplicate, modify or distribute any portion of the Classroom Monitor Software;
  - 3.6.5.2 attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form any part of the Classroom Monitor Software, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties;
  - 3.6.5.3 use the Classroom Monitor Software or Subscription Services to provide services to third parties;
  - 3.6.5.4 transfer, temporarily or permanently, any of your rights under the Agreement,
  - 3.6.5.5 attempt to obtain, or assist others in obtaining, access to the Subscription Services, other than as expressly provided under these conditions; or
  - 3.6.5.6 access all or any part of the Services in order to build a product or service which competes with the Services.
- 3.7 You shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and, in the event of any such unauthorised access or use, promptly notify us.

## 4 Maintenance and Support service

- 4.1 We shall provide the Maintenance and Support service.
- 4.2 Except in the case of an emergency, maintenance of the Subscription Services shall not be performed during Normal Business Hours. However, we may interrupt the Subscription Services outside Normal Business Hours for unscheduled maintenance. We shall at all times endeavour to keep any service interruptions to a minimum.
- 4.3 We will provide maintenance, which will include all regularly scheduled error corrections, software updates and those upgrades limited to improvements to features described in our User Guide.
- 4.4 We shall maintain the Subscription Services. Should you determine that the Subscription Services do not perform substantially in accordance with the description in our User Guide, you may at any time file error reports online through our Website. During maintenance periods, we may, at our discretion, provide upgraded versions of the Classroom Monitor Software, install error corrections and apply patches to the hosted systems. We shall try to avoid unscheduled downtime for Classroom Monitor Software maintenance but cannot guarantee to do so.
- 4.5 Where agreed in the Order Form, and subject to payment of the agreed fee set out in the Order Form, we shall provide your Authorised Users with support services via our User Guide. We will use reasonable endeavours to process support requests and determine the source of the problem and respond to you.

- 4.6 You shall provide support and maintenance for data integration tools and processes developed or maintained by you in order to connect the Subscription Services to your other software and databases.
- 4.7 Before you make changes to integration interfaces between the Subscription Services and your internal data stores or systems, you must provide us with advance notice to ensure your continued access to the Subscription Services is not adversely affected by such changes.

## 5 Your use

- 5.1 In relation to your use of the Subscription Services:
- 5.1.1 you shall not use the Subscription Services in relation to classes exceeding the Authorised Pupil Limit;
- 5.1.2 you shall maintain a written list of your Authorised Users from time to time, and you shall provide such list to us as we may reasonably request from time to time;
- 5.1.3 you shall ensure that each Authorised User keeps a secure password for his use of the Subscription Services, that such password is changed no less frequently than quarterly and that each Authorised User keeps his password confidential;
- 5.1.4 we may audit the Subscription Services to verify your compliance with the terms of the Agreement; and
- 5.1.5 if such audit reveals that passwords have been provided to individuals who are not Authorised Users, and without prejudice to our other rights, we may promptly disable such passwords and shall not issue any new passwords to such individuals.

## 6 Your Data

- 6.1 We shall follow our standard back-up procedures for Your Data. In the event of any loss or damage to Your Data, your sole and exclusive remedy shall be for us to use our best commercial efforts to restore Your Data lost or damaged from the latest back-up of Your Data we maintain in accordance with our standard archiving procedure. We shall not be responsible for any loss, destruction, alteration or disclosure of Your Data caused by any third party (except those third parties we have sub-contracted to perform services related to Your Data maintenance and back-up).
- 6.2 You warrant that you, or your licensors, are the owners of Your Data and that the use, inputting or reproduction of Your Data by you, your Authorised User or us, does not infringe the intellectual property rights of any third party.
- 6.3 We shall, in providing the Services, comply with our Terms of Website use relating to the privacy and security of Your Data available at [http://www.classroommonitor.co.uk/media/classroom\\_monitor\\_terms\\_of\\_website\\_use-May2018.pdf](http://www.classroommonitor.co.uk/media/classroom_monitor_terms_of_website_use-May2018.pdf) , as such document may be amended from time to time by us at our sole discretion.
- 6.4 We reserve the right, without liability to you, to remove all or any part of Your Data, permanently or temporarily, where we:
- 6.4.1 receive a notice issued by you in accordance with clause 10.1.3;

6.4.2 receive notice, otherwise than by way of a notice issued by you, of a claim that Your Data (or any part of it) infringes the intellectual property rights of any third party; or

6.4.3 reasonably suspect that Your Data (or any part of it) infringes the intellectual property rights of any third party.

## 7 Data protection

7.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 7 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. For the purposes of this clause 7, "Data Protection Legislation" shall mean the Data Protection Act 1998 and then, unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) ("GDPR") and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then any successor legislation to the GDPR or the Data Protection Act 1998.

7.2 The parties acknowledge that, for the purposes of the Data Protection Legislation, you are the data controller and we are the data processor (where data controller and data processor have the meanings as defined in the Data Protection Legislation) in respect of any personal data belonging to you (where personal data has the meaning as defined in the Data Protection Legislation).

7.3 Without prejudice to the generality of clause 7.1, we shall, in relation to any personal data belonging to you that is processed in connection with the performance by us of our obligations under the Agreement:

7.3.1 process that personal data only on your written instructions unless we are required by the laws of any member of the European Union or by the laws of the European Union applicable to us to process personal data ("Applicable Laws"). Where we are relying on laws of a member of the European Union or European Union law as the basis for processing personal data, we shall promptly notify you of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit us from so notifying you;

7.3.2 ensure that we have in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of that personal data and against accidental loss or destruction of, or damage to, that personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by us);

7.3.3 ensure that all personnel who have access to and/or process that personal data are obliged to keep the personal data confidential;

7.3.4 not transfer that personal data outside of the European Economic Area unless the following conditions are fulfilled:

- 7.3.4.1 you or we have provided appropriate safeguards in relation to the transfer;
- 7.3.4.2 the data subject has enforceable rights and effective legal remedies (where data subject has the meaning as defined in the Data Protection Legislation);
- 7.3.4.3 we comply with our obligations under the Data Protection Legislation by providing an adequate level of protection to that personal data; and
- 7.3.4.4 we comply with reasonable instructions notified to us in advance by you with respect to the processing of that personal data;
- 7.3.5 assist you, at your cost, in responding to any request from a data subject and in ensuring compliance with your obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 7.3.6 notify you without undue delay on becoming aware of a personal data breach in respect of that personal data;
- 7.3.7 at your written direction, delete or return to you that personal data and all copies thereof on termination of the Agreement unless and to the extent required by Applicable Laws to store that personal data; and
- 7.3.8 maintain appropriate records and information to demonstrate our compliance with this clause 7 and allow for audits in respect of such compliance by you or your designated auditor.
- 7.4 You consent to us holding and processing any personal data you provide (including, personal data included in Your Data and other data relating to you) for the purposes of providing the Services to you.
- 7.5 You warrant that you have obtained appropriate consents to allow us to hold and process any personal data you provide (including, personal data included in Your Data and other data relating to you) for the purposes of providing the Services to you.
- 7.6 You consent to us making personal data you provide (including, personal data included in Your Data and other data relating to you) available to:
  - 7.6.1 those who provide products or services to us (such as our advisers or third party processors), but only where necessary in order for us to provide the Services to you;
  - 7.6.2 regulatory authorities, governmental or quasi governmental organisations, but only where we are compelled to do so; and
  - 7.6.3 potential purchasers of our business or any part of our business, but only after appropriate confidentiality obligations have been put into place.
- 7.7 You acknowledge that nothing in the foregoing shall prevent us from using personal data you provide in ways that are permitted by the Data Protection Legislation.

## 8 Our obligations

- 8.1 We undertake that the Services shall be performed with all reasonable skill and care.

8.2 We undertake that the Subscription Services shall perform substantially in accordance with our User Guide. This undertaking shall not apply to the extent of any non-conformance which is caused by:

8.2.1 use of the Subscription Services contrary to our instructions, outside the terms of the Agreement, or for a purpose or in a context other than the purpose or context for which it was designed; or

8.2.2 modification or alteration of the Subscription Services by any party other than ourselves or our agents.

8.3 If the Services do not conform to the undertaking in clause 8.1 or the Subscription Services do not conform to the undertaking in clause 8.2, we will, at our expense, use commercially reasonable endeavours to correct any such non-conformance promptly, or provide you with an alternative means of accomplishing the desired performance, by providing the Maintenance and Support service. Such correction or substitution constitutes your sole and exclusive remedy for any breach of the undertakings set out in clause 8.1 or clause 8.2. Notwithstanding the foregoing:

8.3.1 we do not warrant that your use of the Services will be uninterrupted or error-free; or that the Services, User Guide and/or any other information obtained by you through access to or use of the Services or otherwise in connection with the Services will meet your requirements; and

8.3.2 is not responsible for any delays, delivery failures or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and our Website may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

8.4 The Agreement with you shall not prevent us from entering into similar agreements with third parties, or from developing, using, selling or licensing materials, products or services which are similar to those that we provide to you.

## 9 Third party providers

9.1 You acknowledge that the Services may enable or assist you to access the website content of, correspond with and purchase products and services from third parties via third party websites and that you do so solely at its own risk. We make no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third party website or any transactions completed or contract entered into by you with any such third party. Any contract entered into and any transaction completed via any third party website is between you and the relevant third party, and not us. We recommend that you refer to the third party's website terms and conditions and privacy policy prior to using the relevant third party website. We do not endorse or approve any third party website or the content of any of the third party website made available via the Services.

## 10 Your obligations

10.1 You shall:

10.1.1 provide us with:



- 10.1.1.1 all necessary co-operation in relation to the Agreement; and
- 10.1.1.2 all necessary access to such information as we may require, in order to render the Services, including but not limited to Your Data, security access information and software interfaces to your other applications;
- 10.1.2 provide such personnel assistance as may be reasonably requested by us from time to time;
- 10.1.3 immediately notify us in writing of any claim that Your Data infringes any intellectual property rights belonging to a third party;
- 10.1.4 comply with, and procure that your Authorised Users comply with, the then current terms of use and acceptable use policy applicable to the Subscription Services;
- 10.1.5 ensure that the Authorised Users use the Services and the User Guide in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;
- 10.1.6 obtain and shall maintain all necessary licences, consents, and permissions necessary for us, our contractors and agents to perform our obligations under this Agreement, including (without limitation) the Services;
- 10.1.7 ensure that your network and systems comply with the relevant specifications provided by us from time to time for access to and use of the Services;
- 10.1.8 be solely responsible for procuring and maintaining your network connections and telecommunications links from its systems to our data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to your network connections or telecommunications links or caused by the internet;
- 10.1.9 comply with all applicable laws and regulations with respect to your activities under the Agreement; and
- 10.1.10 carry out all your other responsibilities set out in the Agreement in a timely and efficient manner. In the event of any delays in your provision of such assistance as agreed by the parties, we may adjust any agreed timetable or delivery schedule as reasonably necessary.

## 11 Charges and payment

- 11.1 You shall pay the fee set out on the Order Form for the provision of the Classroom Monitor Software through the Subscription Services. Unless we agree otherwise in writing, this fee shall be paid by you as an upfront payment. We shall invoice you upon acceptance of the Order Form you have submitted and thereafter at least 30 days prior to each subsequent anniversary of the Effective Date during the term of this Agreement.
- 11.2 In addition we shall invoice you for any additional agreed technical support, training, or consultancy, or for any additional costs resulting from a variation to the Services at any time following our agreement to provide the same in accordance with our then applicable rates.

- 11.3 All amounts and fees stated or referred to in the Agreement shall be payable in pounds sterling, are, subject to clause 15.4, non-cancellable and non-refundable, and are exclusive of value added tax which shall be added to our invoice(s) at the appropriate rate.
- 11.4 Each invoice is due and payable 14 days after the invoice date. If we have not received payment within five days after the due date, and without prejudice to any other of our rights, interest shall accrue on such due amounts at the rate of 8% above 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 the judgment. In addition, we may, without liability to you, disable your password, account and access to all or part of the Subscription Services and we shall be under no obligation to provide any or all of the Subscription Services while the invoice(s) concerned remain unpaid.

## 12 Proprietary rights

- 12.1 You acknowledge and agree that we and/or our licensors own all intellectual property rights in the Classroom Monitor Software, the User Guide and the Services. Except as expressly stated herein, the Agreement does not grant you any rights to, or in, patents, copyrights, database rights, rights in designs, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or any related documentation.
- 12.2 We confirm that we have all the rights in relation to the Subscription Services that are necessary to grant all the rights we purport to grant under, and in accordance with, the terms of the Agreement.

## 13 Confidentiality

- 13.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under the Agreement. 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 performance of its obligations under the Agreement.
- 13.2 The obligation of confidence under clause 13.1 shall not apply to information that:
- 13.2.1 is or becomes publicly known other than through any act or omission of the receiving party;
  - 13.2.2 was in the receiving party's lawful possession before the disclosure;
  - 13.2.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
  - 13.2.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or
  - 13.2.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 13.3 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 breach of the terms of the Agreement.
- 13.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

- 13.5 You acknowledge that the source code and object code of the Classroom Monitor Software, the results of any performance tests of the Classroom Monitor Software and the construction of the Services constitute our Confidential Information.
- 13.6 We acknowledge that Your Data is your Confidential Information.
- 13.7 This clause 13 shall survive expiry or termination of the Agreement, however arising.

## 14 Indemnity

- 14.1 You shall defend, indemnify and hold us harmless against all claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with your use of the Services, and any breach of the warranty in clause 7.5.
- 14.2 You shall defend, indemnify and hold us harmless against all claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with Your Data.
- 14.3 We shall defend you against any claim that the Subscription Services infringes any United Kingdom patent effective as of the Effective Date, copyright or database right, and shall indemnify you for any amounts awarded against you in judgment or settlement of such claims, provided that:
- 14.3.1 we are given prompt notice of any such claim;
  - 14.3.2 you provide reasonable co-operation to us in the defence and settlement of such claim, at our expense; and
  - 14.3.3 we are given sole authority to defend or settle the claim.
- 14.4 In the defence or settlement of the claim, we may obtain for you the right to continue using the Subscription Services, replace or modify the Subscription Services so that it becomes non-infringing or, if such remedies are not reasonably available, terminate the Agreement without any liability to you.
- 14.5 We shall have no liability to you if the alleged infringement is based on:
- 14.5.1 a modification of the Subscription Services by anyone other than us;
  - 14.5.2 your use of the Subscription Services in a manner contrary to the instructions we give to you; or
  - 14.5.3 your use of the Subscription Services after we or an appropriate authority notify you of the alleged or actual infringement.
- 14.6 The foregoing states your sole and exclusive rights and remedies, and our entire obligations and liability, for patent, copyright or database infringement.

## 15 Limitation of liability

- 15.1 This clause 15 sets out our entire financial liability (including any liability for the acts or omissions of our employees, agents and sub-contractors) to you in respect of:
- 15.1.1 any breach of the Agreement;

- 15.1.2 any use made by you of the Services or any part of them; and
- 15.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Agreement.
- 15.2 Except as expressly and specifically provided in our Agreement:
  - 15.2.1 you assume sole responsibility for the results obtained from your use of the Subscription Services and the Services, and for conclusions drawn from such use. We shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts you provide to us in connection with the Services, or any actions we take at your direction; and
  - 15.2.2 all other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into the Agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded.
- 15.3 Nothing in the Agreement excludes our liability:
  - 15.3.1 for death or personal injury caused by our negligence; or
  - 15.3.2 for fraud or fraudulent misrepresentation; or
  - 15.3.3 any other liability it is unlawful to limit or exclude.
- 15.4 Subject to clause 15.3:
  - 15.4.1 we shall have no liability for any losses or damages which you may suffer, whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:
    - 15.4.1.1 special damage even though we were aware of the circumstances in which such special damage could arise;
    - 15.4.1.2 loss of actual or anticipated profits or savings;
    - 15.4.1.3 loss of revenue or turnover;
    - 15.4.1.4 loss of business, business opportunity or contracts;
    - 15.4.1.5 loss of goodwill or reputation; and
    - 15.4.1.6 loss or corruption of data;or for any indirect or consequential loss or damage; and
  - 15.4.2 our 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 the Agreement shall be limited to the total fees paid by you under this Agreement during the 12 months immediately preceding the date on which the claim arose.

## 16 Term and termination

- 16.1 The Agreement shall commence on the Effective Date and shall, unless otherwise terminated as provided in this clause 16, continue for the initial licence term set out in the Order Form (the **Initial Licence Term**) and, thereafter, this Agreement shall be automatically renewed for successive licence terms of the same duration as the Initial Licence Term (each a **Renewal Licence Term**), unless:
- 16.1.1 either party notifies the other party of termination, in writing, at least 60 days before the end of the Initial Licence Term or any Renewal Licence Term, in which case this Agreement shall terminate upon the expiry of the Initial Licence Term or Renewal Licence Term (as applicable). For the purposes of this clause 16.1.1 notice in writing to us must be sent to [renewals@classroommonitor.co.uk](mailto:renewals@classroommonitor.co.uk); or
  - 16.1.2 otherwise terminated in accordance with the provisions of this Agreement.
- 16.2 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Agreement without liability to the other if:
- 16.2.1 the other party commits a breach of any of the terms of the Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach;
  - 16.2.2 an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party;
  - 16.2.3 an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986);
  - 16.2.4 a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets;
  - 16.2.5 the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt;
  - 16.2.6 the other party ceases, or threatens to cease, to trade; or
  - 16.2.7 the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.
- 16.3 On termination of the Agreement for any reason:
- 16.3.1 all licences granted under the Agreement shall immediately terminate;

- 16.3.2 each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party except that we may continue to hold and use Your Data provided it is in aggregated and anonymised form;
- 16.3.3 you shall immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, we may submit an invoice, which shall be payable immediately on receipt;
- 16.3.4 for a period of 90 days following termination, we shall, upon your request, provide you with such access to our network and systems as is necessary for you to retrieve our most recent back-up of Your Data in such format as we in our sole but reasonable discretion determine, after which we may destroy or otherwise dispose of any of Your Data in our possession. You shall pay all reasonable expenses we incur in providing you with such access for such purposes; and
- 16.3.5 the accrued rights of the parties as at expiry or termination, or the continuation after expiry or termination of any provision expressly stated to survive or implicitly surviving expiry or termination, shall not be affected or prejudiced.

## 17 Force majeure

- 17.1 We shall have no liability to you under the Agreement if we are prevented from or delayed in performing our obligations under the Agreement, or from carrying on our business, by acts, events, omissions or accidents beyond our reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving our workforce or any other party), failure of a utility service, telecommunications or transport 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 you are notified of such an event and its expected duration.

## 18 Waiver

- 18.1 A waiver of any right under the Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.
- 18.2 Unless specifically provided otherwise, rights arising under the Agreement are cumulative and do not exclude rights provided by law.

## 19 Severance

- 19.1 If any provision (or part of a provision) of the 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 The Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 20.2 Each of the parties acknowledge and agree that in entering into the Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the Agreement or not) relating to the subject matter of the Agreement, other than as expressly set out in the Agreement.

## **21 Assignment**

- 21.1 You shall not, without our prior written consent, assign, transfer, charge, sub-contract or deal in any other manner with all or any of your rights or obligations under the Agreement.
- 21.2 We may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of our rights or obligations under the Agreement.

## **22 No partnership or agency**

- 22.1 Nothing in the 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**

- 23.1 The Agreement is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.

## **24 Notices**

- 24.1 Except where otherwise stated in this Agreement, any notice required to be given under the 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 on the Order Form or sent by email to the other party's email address as set out in the Order Form.
- 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 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 receipt.

## **25 Governing law and jurisdiction**

- 25.1 The Agreement and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the law of England.
- 25.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Agreement except that nothing in this Agreement shall prevent us from seeking equitable relief in any competent jurisdiction.