Track Zone Terms of Service

Track Zone software is produced by Dimensions Curriculum. This document serves to outline the terms of the agreement between the **licensor** (hereto referred to as Dimensions Curriculum) and the **licensee** (you, the customer).

Please read the Track Zone Terms of Service before using the Software. This Agreement is a legal agreement between Dimensions Curriculum and the Licensee for the Licence of the Software.

1. Definitions, interpretation and scope

1.1 In this agreement, unless otherwise provided:

2018 Act means the Data Protection Act 2018 including the General Data Protection Regulations (2016);

**Agreement** means the terms in the main body of this agreement, the appendices and the Schedule;

**Business Day** means any day (other than a Saturday or Sunday) on which banks are generally open in London for non-automated normal business;

**Client** refers to the licensee/customer;

**Data** means the pupil data or information, in whatever form, made available to Dimensions Curriculum by the Licensee;

**Derived Data** means any Data (wholly or in part) manipulated to such a degree that it cannot be identified as originating or deriving directly from the Data or such that it can be so identified;

**Distribute** means to make Data accessible (including the provision of access through a database or other application populated with the Data, re-selling, sub- licensing, transferring or disclosing the Data) by any means, including any electronic means, to any Dimensions Curriculum User;

**Dimensions Curriculum User** means any person authorised by Dimensions Curriculum to access and use the Data; Dimensions Curriculum’s Licensor means any licensor of Dimensions Curriculum including a provider software or third party libraries in object code or otherwise;

**Good Industry Practice** means in relation to any undertaking and any circumstances, the exercise of that degree of care, and skill which would reasonably and ordinarily be expected from a skilled, professional and experienced person engaged in the same type of undertaking under the same or similar circumstances;

**Helpdesk** means a manned telephone line;

**Initial Licence Period** means a period of twelve-months from commencement of this Agreement;

**Intellectual Property Rights** means copyright, rights in inventions, patents, know- how, trade secrets, trademarks and trade names, service marks, design rights, rights in get-up, database rights, chip topography rights, and any other intellectual property rights (whether registered or unregistered) and all applications for any of the foregoing, anywhere in the world;

**Licence** means the licence granted by Dimensions Curriculum to the Licensee in respect of the Software subject to the terms of the Agreement;

**Licence Fee** means the amount payable by the Licensee to Dimensions Curriculum in respect of the Licence;

**Licence Period** means the duration of the Licence;

**Manipulate** means to combine or aggregate the Data (wholly or in part) with other data or information or to adapt the Data (wholly or in part);

**Manipulated Data** means any Data which has been manipulated. Manipulated Data includes any Derived Data; personal data that is manipulated is anonymized or pseudonymised to the extent it is no longer personally identifiable Data;

**Modifications** mean any correction, modification, enhancement, update or other change made by Dimensions Curriculum to the Software;

**Party** means each of Dimensions Curriculum and the Licensee and together being the ‘Parties’;

**Renewal Licence Period** means the twelve-month period after the expiry of the Initial Licence Period and each subsequent twelve-month period;

**Representatives** means the employees, agents, contractors or representatives of the Licensee and other persons duly authorised on its behalf in the using of the Software pursuant to the Agreement;

**Software** means the TrackZone online software;

**Supplier** refers to Dimensions Curriculum;

**Helpdesk Services** means the provision of the Helpdesk during working hours;

**Update** means a maintenance release, correction, amendment, or update of the Software provided without additional charge to the Licensee;

**working hours** means the hours between 0900 and 1700 local time in London, United Kingdom, Monday to Friday on Business Days.

* 1. Unless the context otherwise requires:

1.2.1  each gender includes the others;

1.2.2  the singular includes the plural and vice versa;

1.2.3  references to Clauses, Schedules or Appendices refers to Clauses, Schedules or Appendices of this Agreement;

1.2.4  references to this Agreement include its Schedules and Appendices;

1.2.5  references to persons include individuals, unincorporated bodies, government entities, companies and corporations; and

1.2.6 the words ‘including’ or ‘includes’ means including or includes without limitation.

**2. Grant of licence**

2.1 Subject to the payment of the applicable Licence Fee, Dimensions Curriculum grants to the Licensee a non-exclusive and non-transferable limited Licence to access Track Zone in accordance with the terms of this Agreement.

2.2. The Licence will be granted for the Initial Period and will continue thereafter from year to year unless or until terminated in accordance with the provisions of this Agreement.

2.3 If use of the Software outside the United Kingdom is authorised by Dimensions Curriculum, the Licensee shall be responsible at its expense for complying with all applicable laws and regulations and obtaining any applicable licences and consents, relating to the import, export, access, or use of the Software.

**3. Fees and payment**

3.1 The Licensee shall pay to Dimensions Curriculum the Licence Fee under this Agreement within thirty (30) days of receipt of Dimensions Curriculum’s invoice, or as otherwise specified by Dimensions Curriculum.

3.2 The Licence Fee is exclusive of VAT and any other Sales Tax or Duty which, if applicable, shall be paid additionally by the Licensee at the then prevailing rate.

3.3 If any sum due to Dimensions Curriculum under the Agreement (other than one which is the subject of a genuine dispute which is notified to Dimensions Curriculum in accordance with this Agreement) is in arrears for more than 30 days after the due date, Dimensions Curriculum may without prejudice to any other right or remedy;

3.3.1 charge interest on such overdue sum on a day-to-day basis from the original due date until paid in full at the rate prescribed under the Late Payment of Commercial Debts (Interest) Act 1998; and/or

3.4 The Licensee must notify Dimensions Curriculum in writing within fifteen (15) Business Days of receipt of an invoice if the Licensee considers such invoice incorrect or invalid for any reason and the reasons for withholding payment failing which the Licensee will raise no objection to any such invoice and will make full payment in accordance with it.

**4. Delivery and installation**

4.1 Where payment of any part of the Licence Fee is due before access to Track Zone is granted, Dimensions Curriculum may withhold access until such payment has been received.

4.2 Unless otherwise specified by Dimensions Curriculum, the Licensee is responsible for making sure Track Zone can be accessed.

4.3 If Dimensions Curriculum is delayed from performing its obligations by reason of any fault or negligence of the Licensee, then the Licensee shall pay to Dimensions Curriculum all reasonable and demonstrable costs attributable to such delay.

5. Permitted use

5.1 The Licensee may use the Software only for its own internal purposes.

5.2 The Licensee shall not use or attempt to use the Software (whether on behalf of, or for the benefit of, itself or a third party) or permit or allow any third party to:

5.2.1  distribute or resell the Software;

5.2.2  contrary to any restriction stated in the Agreement; or

5.2.3  unless otherwise expressly permitted by the Agreement.

5.3 The Licence shall include the right of the Licensee’s Representatives to use and have access to the Software to the extent that the Licensee may use and have access to the Software provided that:

5.3.1 such use is controlled by the Licensee; and

5.3.2 such use is otherwise subject to and in accordance with the terms of the Agreement.

5.4 The Licensee shall procure that its Representatives:

5.4.1 are aware of the obligations or restrictions imposed on the Licensee under the Agreement; and

5.4.2 shall use its reasonable endeavours to ensure that they comply with the provisions of the Agreement.

**6. Restrictions on use**

6.1 Except to the extent required to be permitted by applicable law or as expressly allowed in this Agreement, the Licensee shall not:

6.1.1 translate, adapt, disassemble, reverse engineer, decompile or copy the whole or any part of the Software, nor arrange or create derivative works based on the Software;

6.1.2 make for any purpose including (without limitation) error correction, any modifications, additions or enhancements to the Software;

6.1.3 permit the whole or any part of the Software to be combined or merged with or become incorporated in any other program;

6.1.4 assign, distribute, licence, sell, charge or otherwise deal in or encumber the Software;

6.1.5 use the Software on behalf of or make it available to any third party nor allow or permit a third party to do so; or

6.1.6 remove or alter any copyright or other proprietary notice on any of the Software.

7. **Proprietary rights**

7.1 The Licensee shall not acquire in any way any title, rights of ownership, Intellectual Property Rights of whatever nature in the Software or in any copies of it. All such interests and rights are and shall remain the exclusive and absolute property of Dimensions Curriculum or Dimensions Curriculum Licensor as applicable.

7.2 The Intellectual Proprietary Rights and all other proprietary rights in any materials developed under this Agreement including the Modifications will remain vested in and be the absolute property of Dimensions Curriculum or Dimension’s Licensor. The Licensee will do all such acts and things as Dimensions Curriculum may reasonably require for the purpose of preserving or perfecting such vesting.

7.3 Those Modifications supplied for use as part of the Software will be deemed to form part of the Software and be subject to the Licence.

7.4 The Licensee agrees not to conceal, modify, remove, or destroy in any way any proprietary markings of Dimensions Curriculum or Dimensions’s Licensor on or in the Software including without limitation any copyright notices or confidential legends placed upon or contained within the Software or any related materials and documentation. The Licensee shall incorporate or reproduce such proprietary markings in any permitted back-up or other copies.

7.5 The Licensee acknowledges and understands that the Software contains confidential and proprietary information and the Licensee shall:

7.5.1 not provide or otherwise make any of the Software available for any reason to any other person except as permitted by the Agreement or otherwise in accordance with express written authority signed by an authorised signatory of Dimensions Curriculum;

7.5.2 keep confidential the Software and limit access to the same to those of its Representatives who either have a need to know or who are engaged in the use of the Software;

7.5.3 apply appropriate security measures to ensure that all relevant representatives are advised that the Software constitutes confidential and proprietary information of Dimensions Curriculum and/or Dimensions Curriculum’s Licensors and that all Intellectual Property Rights therein are the property of Dimension Curriculum and/or Dimension Curriculum’s Licensor and that they owe a duty of confidentiality to Dimension Curriculum and/or Dimension Curriculum’s Licensor.

7.6 The Licensee shall effect and maintain appropriate security measures to safeguard the Software from unauthorised access, use or copying by any person.

7.7 The Licensee shall notify Dimensions Curriculum as soon as reasonably practicable if the Licensee becomes aware of any unauthorised access to, use or copying of any part of the Software by any person.

7.8 The Licensee shall, at reasonable times during working hours on being given reasonable notice allow Dimensions Curriculum to check on the use by the Licensee of the Software and all materials and information belonging to or under the control of Dimensions Curriculum to which the Licensee is given access or receives directly or indirectly as a result of the operation of the Agreement.

8. **Warranties**

8.1 Subject to the exceptions and the limitation upon its liability, Dimensions Curriculum warrants that it has the right, power and authority to Licence the Software upon the terms of the Agreement.

8.2 The Licensee acknowledges that:

8.2.1 Dimensions Curriculum is not and cannot be aware of the extent of any potential loss or damage to the Licensee resulting from any failure of the Software or any failure by Dimensions Curriculum to discharge its obligations under the Agreement;

8.2.2 the Software cannot be tested in every possible combination and operating environment, and that it is not possible to produce or maintain economically (if at all) computer programs known to be entirely error free or which operate in uninterrupted manner.

8.3 Dimensions Curriculum does not warrant that the operation of the Software shall be uninterrupted or error-free.

8.4 The Licensee acknowledges that the Software has not been prepared to meet the Licensee’s individual requirements and that it is the Licensee’s responsibility to ensure that the facilities and functions of the Software meet the Licensee’s requirements.

8.5 To the extent permitted by applicable law, Dimensions Curriculum disclaims all other warranties and conditions as to the Software including but not limited to implied warranties relating to quality, fitness for a particular purpose, or ability to achieve a particular result.

8.6 Without prejudice to the Licensee’s right to terminate this Agreement for material breach the Licensee’s sole remedy against Dimensions Curriculum for any failure on the part of the Software shall be to require Dimensions Curriculum to use all reasonable endeavours to correct such failure, free of additional charge, and within a reasonable time.

8.7 Dimensions Curriculum undertakes to use all reasonable endeavours to remedy free of charge to the Licensee any faulty work arising from a breach of the warranty which is reported to Dimensions Curriculum in writing within ninety (90) days after performance by Dimensions Curriculum of such work. If Dimensions Curriculum rectifies such faulty work by the provision at Dimensions Curriculum’s option of replacement or additional materials or services within a reasonable period of time, then Dimensions Curriculum will have no other liability of any kind in respect of or arising from such faulty work.

8.8 Dimensions Curriculum will not be liable to remedy any problem arising from or caused by any modification (whether by way of alteration, deletion, addition or otherwise) made to any part of the Software (including data structure) by persons other than the Licensee without its express prior written consent.

**9. Limitation of liability**

9.1 Nothing in the Agreement shall exclude or restrict either Party’s liability for:

9.1.1 fraud;

9.1.2 death or personal injury resulting from the negligence of a Party or its employees while acting in the course of their employment; or

9.1.3 any other liability that cannot be limited or excluded by law.

9.2 Subject to clause 9.1, Dimensions Curriculum’s liability to the Licensee in contract, tort (including negligence), misrepresentation (whether innocent or negligent) breach of statutory duty or otherwise arising out of or in connection with the Software or other performance or non-performance of Dimensions Curriculum’s obligations under the Agreement shall:

9.2.1 be limited to the Licence Fee paid by the Licensee under the Agreement for the preceding twelve months in respect of any one incident or any series of connected incidents;

* + 1. not extend to any:

 loss of profits;

loss of revenue;

loss of business;

loss of goodwill;

loss of contracts;

loss of anticipated savings;

loss of production;

loss of or corruption to data; or

any other special, indirect or consequential loss or damage whatsoever,

whether sustained by the Licensee or any other person and even if foreseeable or if Dimensions Curriculum has been advised of their possibility.

9.3 All advice and recommendations given by Dimensions Curriculum and its representatives shall be made in good faith and in accordance with Good Industry Practice and on the basis of information provided to Dimensions Curriculum and otherwise generally available. Advice or recommendations by Dimensions Curriculum shall in no circumstances constitute a warranty by Dimensions Curriculum as to the accuracy of such advice or recommendations and Dimensions Curriculum shall not in any event be liable for any loss or damage that may be suffered whether directly or indirectly as a result of the Licensee acting upon such advice or recommendations.

**10. Licensee’s obligations**

10.1 The Licensee undertakes to:

10.1.1 provide Dimensions Curriculum with all necessary information, facilities, support and, services reasonably required by Dimensions Curriculum for the performance of its obligations to the Licensee under the Agreement;

10.1.2 provide or arrange at its expense for any specialist training in the Licensee’s methods, business practices, applications or products which it is required to reasonably undertake by Dimensions Curriculum or which Dimensions Curriculum considers reasonably necessary for the proper performance of its obligations under the Agreement;

10.1.3 ensure that the Software is used in a proper manner by competent trained employees only, or by persons under their supervision; and

10.1.4 be fully responsible for all applications, data, interfaces, hardware and equipment within its control unless agreed otherwise.

11. **Helpdesk**

11.1 Dimensions Curriculum shall provide Helpdesk Services to the Licensee in relation to the Software during the Initial Licence Period and each subsequent Renewal Licence Period.

11.2 The Licensee acknowledges that provision of the Helpdesk Services does not imply any guarantee that Dimensions Curriculum will be able to assist the Licensee in achieving any results from the Software which are not technically feasible.

11.3 Dimensions Curriculum shall be under no obligation to provide services in relation to the Software additional to the Helpdesk Services, or which do not qualify under or are excluded from the Helpdesk Services but if it does so, the Licensee shall pay the cost of such services to Dimensions Curriculum.

11.4 Before contacting the Helpdesk, users should explore help that is readily available in their setting. This help might come from the help utility that is built into the software, and/or peers in the department. When such local help has been exhausted and assistance is needed, then the users should contact the Helpdesk. Throughout the Licence Period, Dimensions Curriculum will send guidance by email or other means to the Licensee directly relating to the software, associated software, and its use. The Licensee will ensure contact details are kept up-to-date.

11.5 Support term - The term of service for support hours is defined as one year from the date of purchase or until the included 3 hours support has been used, whichever comes first. Further support can be purchased. The included 3 hours does not include issues as a result of technical faults with the software.

**12. Data use**

12.1 **Applicability**

Each party will comply with its obligations under this Clause 12 if and to the extent that personal data is processed in connection with this Agreement.

12.2 Additional Definitions In this Clause 12:-

12.2.1 Data Controller or Controller, Data Subject, Personal Data and Processing shall bear the respective meanings given to them in the Data Protection Act 2018 and the GDPR (and "Process" shall be construed accordingly);

12.2.2 The GDPR means the General Data Protection Regulation 2016 (Regulation (EU) 2016/679); and

12.2.3  Data Protection Law means the GDPR and any other legislation in force from time to time which implements the GDPR, the Data Protection Act 2018, the Regulation of Investigatory Powers Act2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and all Applicable Law in any jurisdiction relating to the processing or protection of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant supervisory authority from time to time.

12.3 **Details of Data Processing**

12.3.1 Subject Matter

The subject matter of the data processing is the Licensee’s Data.

12.3.2 Duration

The duration of the processing shall be as instructed by the Licensee or until the relevant services have been terminated or expire.

12.3.3 Purpose of Processing
The purpose of the data processing is the provision of the services pursuant to this agreement.

12.3.4 Types of Personal Data

The supplier processes personal data such as name, email address and date of birth. The supplier also processes sensitive personal data such as pupil assessment data.

12.3.5 Categories of Data Subject

Data Subjects include the Licensee’s employees, pupils and end-users of the service.

12.4 **Obligations and Rights**

12.4.1 Compliance with Laws
The Licensor and the Licensee will each comply with Data Protection Law. In particular, the client warrants and undertakes that:-

(a) it has obtained appropriate authority from all data subjects to whom it relates, or has provided them with the requisite information required under applicable Data Protection Law or has otherwise satisfied itself regarding the legal basis for processing Personal Data under the GDPR, to enable the Licensor to process the personal Data in accordance with this Agreement; and

(b) it has all necessary appropriate consents and notices in place or has otherwise satisfied itself regarding the legal basis for processing personal data under the GDPR to enable lawful transfer of the personal data to the supplier for the duration and purposes of this agreement.

12.4.2 Processing
The supplier will not process data other than to provide the services, as instructed by the Licensee or as necessary to comply with law.

12.4.3 Submit to Audits and Inspections

The supplier will:-

(a)  permit the Licensor to undertake an audit of the supplier's records relating to the provision or the services to the client to confirm the supplier's compliance with Data Protection Law provided that the supplier is given at least 60 days' prior notice and provided further that such audits shall not be performed more than once in any 12 month period (unless otherwise required by a supervisory authority);

(b)  provide all information as reasonably requested by the client to demonstrate that the supplier has met their obligations pursuant to Data Protection Law; and

(c)  advise the client promptly if it becomes aware of any instruction given by the client that does not comply with the GDPR or any other Data Protection Law.

12.4.4 Cooperate with Supervisory Authorities
The supplier shall, where applicable, cooperate with the supervisory authorities and make any records, if requested, available for auditing purposes.

12.4.5 Records of Processing Activities

The supplier shall keep and maintain records of all processing activities in respect of provision of the services in accordance with the requirements of Data Protection Law.

12.5 Client Instructions

The supplier will only process Personal Data in accordance with the documented instruction of the client unless required to do so by law, in such a case, the supplier will inform the client of that legal requirement before processing, to the extent it is legally permitted to do so.

12.6 Confidentiality

The supplier shall ensure that persons Processing Personal Data for or on behalf of the supplier are authorised and are subject to appropriate confidentiality, data protection and data security obligations.

12.7 Sub-Processors

12.7.1 The client agrees that the supplier may use subcontractors to fulfil its contractual obligations who will undertake processing of Client Data ("Sub-Processors").

12.7.3 The Supplier will:-

(a)  limit the Sub-Processor's access to Client Data only to what is necessary to provide or maintain the service;

(b)  remain responsible to the client for any acts or omissions of the Sub-Processor that cause the Supplier to breach any of the supplier's obligations under this Clause 12.

12.8 All Parties shall comply with their obligations under the 2018 Act and the Computer Misuse Act 1990 in so far as performance of this Licence Agreement gives rise to obligations under those Acts.

12.9 Notwithstanding the general obligation in clause 12.3, where it is processing personal data (as defined by the 2018 Act) as a Data Processor (as defined by the 2018 Act) all parties shall ensure that they have in place appropriate technical and organisational measures to ensure the security of the personal data (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data), as required under the Sixth Data Protection Principle in Article 5(f) of the General Data Protection Regulations (2016).

12.10 Assisting the Client and the Data Subjects' Rights

The Supplier will provide all information reasonably requested by the client to assist the Client:-

12.10.1 to meet the client's obligations to advise data subjects and supervisory authorities of Personal Data breaches;

12.10.2 to comply with Data Subject access requests; and

12.10.3 to carry out data protection impact assessments ("DPIA").

12.11 Security Breach Notification

The supplier will notify the client of a Personal Data breach without undue delay after becoming aware of such a breach.

12.12 End of Contract Provisions

Subject to Data Protection Laws, upon termination of this Agreement, the supplier will delete all Personal Data if requested by the Client except to the extent any Personal Data is required to be retained by the supplier under Applicable Laws.

**13. Termination**

13.1 Either Party may (without prejudice to its other rights) terminate the Agreement at any time forthwith by notice in writing to the other if:

13.1.1 a voluntary arrangement is approved, or an administration order is made, or receiver or administrative receiver is appointed over any of the other Party’s assets or undertaking or resolution or petition to wind up the other Party is passed or presented (other than for the purposes of amalgamation or reconstruction) or if any circumstances arise which entitle the Court or a creditor to appoint a receiver, administrative receiver or administrator or to present a winding up petition or make a winding up order; or

13.1.2 the other Party defaults in due performance or observance of any of its material obligations under the Agreement, and (in the case a remedial breach) fails to remedy the breach within 30 days of receipt of a written notice to do so; or

13.1.3 are in breach of any of the obligations of confidentiality specified in clause [16] of this Agreement.

13.2 Dimensions Curriculum may terminate this Agreement at any time forthwith by notice in writing to the Licensee if the Licensee or Representatives:

13.2.1 infringe Dimensions Curriculum’s (or Dimensions Curriculum’s Licensor’s) Intellectual Property Rights; or

13.2.2 are in breach of any of the obligations of confidentiality specified in this Agreement;

13.2.3 and (where capable of remedy) such breach has not been remedied within fourteen (14) days

13.2.4 of Dimensions Curriculum having given written notice to the Licensee in writing specifying the breach and requiring its remedy within such fourteen (14) day period.

13.3 Termination of this Agreement for any reason, shall be without prejudice to the rights and liabilities of either Party which may have accrued on, or at any time up to the date of termination, nor affect the coming into or continuance in force of any provision of the Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.

13.4 Upon termination of this Agreement by Dimensions Curriculum then the Licence will terminate and the Licensee shall forthwith cease using the Software and shall remove or destroy forthwith all copies of the Software or, at Dimensions Curriculum’s request, return all copies of the same to Dimensions Curriculum.

**14. Force Majeure**

14.1 Force Majeure means an event or sequence of events beyond a Party’s reasonable control preventing or delaying it from performing its obligations hereunder. Inability to pay is not Force Majeure.

14.2 A Party will not be liable if delayed in or prevented from performing its obligations under this Agreement due to Force Majeure, provided that it:

14.2.1 promptly notifies the other of the Force Majeure event and its expected duration; and

14.2.2 uses reasonable endeavours to minimise the effects of that event.

14.3 If, due to Force Majeure, a Party:

14.3.1 is (or is likely to be) unable to perform a material obligation; or

14.3.2 is (or is likely to be) delayed in or prevented from performing its obligations for a continuous period of more than sixty (60) Business Days;

14.3.3 the Parties will renegotiate the Agreement to achieve, as nearly as possible, its original commercial intent.

**15. Confidentiality**

15.1 Each Party will treat as confidential all information obtained from the other Party under or in connection with this Agreement which is designated as confidential by the other Party or which is by its nature clearly confidential. The recipient Party will not disclose such confidential information to any person (except only to those employees, agents, sub-contractors, suppliers and other representatives who need to know it) or use such confidential information without the other Party’s prior written consent. This clause will not extend to information which:

15.1.1 was in the possession of the recipient Party (with full right to disclose) before receiving it;

15.1.2 is already or becomes public knowledge (otherwise than as a result of a breach of this clause);

15.1.3 is independently developed by the recipient Party without access to or use of such information;

15.1.4 is required to be disclosed by law or regulatory authority.

15.2 Each Party will ensure that all persons to whom it discloses any confidential information of the other Party are aware, prior to disclosure, of the confidential nature of the information and that they owe a duty of confidence to the other Party. These obligations of confidentiality will survive any termination of this Agreement.

15.3 Each Party will establish and maintain adequate security measures to safeguard information and data of the other Party in its possession from unauthorised access use or copying.

**16. Dispute resolution**

16.1 Without prejudice to the termination provisions in this Agreement, if a Party believes in good faith that the other Party (Other Party) has breached any material term of this Agreement, that Party (Aggrieved Party) shall notify the Other Party, in writing setting forth in reasonable detail the nature of the alleged breach (Notice of Breach). If the Other Party does not dispute the validity of the Notice of Breach, it shall promptly undertake to cure the breach described therein. If, the Other Party disputes the validity of the Notice of Breach, then the Parties shall comply with the following provisions [in order to expedite the review, verification, cure and remedy of any such breach].

16.2 Any dispute to be resolved under this Agreement shall first be submitted for resolution to the representatives of each Party then charged with the administration of this Agreement. If such representatives are unable to resolve the dispute within five (5) Business Days after the date on which the Notice of Breach is received by the Other Party, then, the dispute shall be submitted to the Directors (or persons of comparable authority) of each Party for resolution. If such Directors are unable to resolve the dispute within ten (10) Business Days after the date on which the Notice of Breach is received by the Other Party, then each Party shall be free to pursue whatever remedies hereunder, at law or in equity may be available to it in respect of the subject matter of the dispute.

16.3 Notwithstanding anything herein to the contrary, the cure period provided in this Agreement for any breach which is the subject of a dispute submitted for resolution in accordance with this clause will be suspended during foregoing dispute resolution procedures and commence to run on the day after the dispute has been resolved in favour of the Aggrieved Party or the dispute resolution procedures have been exhausted, whichever is applicable.

**17. Mediation**

Before resorting to legal proceedings the Parties may (but shall not be obliged to) attempt to settle by negotiations between them in good faith all disputes or differences between them out of or in connection with this Agreement. The Parties further agree that (provided that both Parties consider that such negotiations will be assisted thereby), they will appoint a Mediator by mutual agreement, or failing mutual agreement each Party will appoint a Mediator of their choice and the two appointed Mediators will appoint a third mediator to assist them and the Parties in such negotiations. Mediation shall take place in London or such other place as the Parties mutually agree. Both Parties agree to co-operate fully with the appointed Mediator (or Mediators), provide such assistance as necessary to enable the Mediators to discharge their duties, and to bear equally between them the fees and expenses of the Mediators, but otherwise each Party shall bear their own costs. Unless the Parties otherwise agree in writing, if Mediation is unable to resolve the dispute within thirty (30) days from the Notice of Breach above then the dispute shall be determined by the courts of England and Wales.

**18. Assignment**

18.1 Neither Party shall be entitled to assign or sub-licence to any third party any of its rights or obligations under the Agreement without the other Party’s prior written consent.

18.2 Dimensions Curriculum shall be entitled to assign or sub-contract its rights and obligations under this Agreement to any person, but Dimensions Curriculum shall give notice of such assignment or sub- contracting in writing to the Licensee.

**19. Severability**

If any part, term or provision of the Agreement not being of a fundamental nature be held illegal or unenforceable the validity or enforceability of the remainder of the contract shall not be affected.

**20. Entire agreement**

20.1 This Agreement is the entire agreement between the Parties in relation to its subject matter. To the fullest extent permitted by law no other terms apply.

20.2 Without prejudice to clause 20.1, or to liability for fraudulent misrepresentation, each Party acknowledges that has not relied on any statement or representation given by or for the other in entering into this Agreement.

**21. No waiver**

Unless otherwise agreed in writing, no delay, act or omission by either Party in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy.

**22. Notice**

Notices under this Agreement will be in writing and sent to the Party’s address above. They may be given, and will be deemed received:

22.1  by first-class post: two Business Days after posting;

22.2  by airmail: seven Business Days after posting;

22.3  by hand: on delivery;

22.4  by facsimile: on receipt of a successful transmission report from the correct number;
22.5 by email: on receipt of a delivery or read return mail from the correct address.

**23. Variation**

The Agreement may be amended only in writing signed by both Parties.

**24. Relationship of the parties**

This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided in this Agreement.

**25. Rights of third parties**

A person who is not a Party to this Agreement has no right to benefit or to enforce any term of this Agreement.

**26. Governing**

The Agreement shall be governed by and construed and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the English Courts.