

Customer Terms and Conditions

Between

emPSN Services Limited

and

our Customer

Terms and conditions for the supply of goods and services

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1. INTERPRETATION

The following definitions and rules of interpretation apply in this agreement.

1.1 DEFINITIONS:

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

Commencement Date: has the meaning given in *Clause 2.2*.

Company: emPSN Services Limited registered in England and Wales with company number [05882746].

Conditions: these terms and conditions as amended from time to time in accordance with *Clause 17.8*.

Contract: the contract between the Company and the Customer for the supply of Goods and/or Services in accordance with these Conditions, including (without limitation) any applicable access terms and conditions signed by a school accessing the Services under this agreement through a MAT.

Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures: as defined in the UK Data Protection Legislation.

Customer: the person or firm or MAT or any school accessing the Services through a MAT, including any other educational institution that purchases the Goods and/or Services from the Company.

Deliverables: the deliverables set out in the Order put together by the Company for the Customer.

Delivery Location: has the meaning given in *Clause 4.2*.

Force Majeure Event: has the meaning given to it in *Clause 16*.

Goods: the goods (or any part of them) set out in the Order.

Goods Specification: any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Company.

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

MAT: means multi-academy trusts formed under Academies act 2010.

Order: the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form.

Order Form: the order form template as set out in Annex 2 (Order Form Template)

Services: the services, including the Deliverables, supplied by the third party service provider to the Customer as set out in the Service Specification.

Service Specification: the description or specification for the Services provided the third party service provider the Customer.

UK Data Protection Legislation: data protection legislation includes all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR), the Data Protection Act 2018 (and regulations made thereunder) or any successor legislation, 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 and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.).

1.2 Interpretation:

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

(b) A reference to a party includes its personal representatives, successors and permitted assigns.

(c) 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.

(d) 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.

(e) A reference to **writing** or **written** includes fax and email.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Company issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 The Customer acknowledges and accepts that the Company is acting as an aggregator in bundling

the Goods and Services provided by third party service providers or supplier through a framework agreement that is compliant with applicable procurement laws.

2.4 These Conditions apply to the Contract in addition to any conditions imposed by the third party service provider or supplier.

2.5 Any quotation given by the Company shall not constitute an offer, and is only valid for a period of 22 (Twenty two) Business Days from its date of issue.

2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

2.7 Any Customer that is part of a MAT hereby acknowledges and accepts that provision of Services will be in accordance with any access terms and conditions, if entered into, that apply between the Company and the relevant MAT and that it has the appropriate authority to enter into this Contract.

3. GOODS

3.1 The Goods are described in Company website with link(s) through to the third party service provider's or supplier's catalogue.

3.2 The Customer acknowledges and accepts that the third party service provider may in its absolute discretion, amend the Goods Specification if required by any applicable statutory or regulatory requirement, and the third party will notify the Customer as soon as reasonably possible.

4. DELIVERY OF GOODS

4.1 The Customer will agree delivery timescales with the supplier.

4.2. The terms and conditions hereunder are in addition to the terms and conditions imposed by the supplier.

5. TITLE AND RISK

5.1 The risk in the Goods shall pass to the Customer on completion of delivery.

5.2 Title to the Goods shall not pass to the Customer until the Company receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Company has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and

5.3 Until title to the Goods has passed to the Customer, the Customer shall:

(a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;

(b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

(c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Company's behalf from the date of delivery;

(d) notify the Company immediately if it becomes subject to any of the events listed in *Clause 14.2(b)* to *Clause 14.2(d)*; and

(e) give the Company such information relating to the Goods as the Company may require from time to time.

5.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in *Clause 14.2(b)* to *Clause 14.2(d)*, then, without limiting any other right or remedy the Company may have:

(a) the Company may at any time:

(i) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and

(ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

6. SUPPLY OF SERVICES

6.1 The Company shall supply the Services to the Customer in accordance with the Service specification set out in the Order Form and the third party service provider's catalogue.

6.2 The Customer acknowledges and accepts that the supplier may amend the Service Specification if necessary to comply with any applicable laws or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the supplier will notify the Customer in any such event.

7. CUSTOMER'S OBLIGATIONS

7.1 The Customer shall:

(a) ensure that the terms of the Order and any information it provides in the Service Specification and the Goods Specification are complete and accurate;

(b) co-operate with the supplier in all matters relating to the Services;

(c) provide the supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the supplier to provide the Services;

(d) provide the supplier with such information and materials as the supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;

(e) prepare the Customer's premises for the supply of the Services;

(f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;

(g) comply with all applicable laws, including health and safety laws;

(h) comply with any additional obligations as set out in the Service Specification and the Goods Specification; and

(i) comply with all other relevant instructions and requirements notified by the supplier.

7.2 If the Company's or supplier's performance of any of its obligations under the Contract is prevented

or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

(a) without limiting or affecting any other right or remedy available to it, the supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the supplier's performance of any of its obligations;

(b) the supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the supplier's failure or delay to perform any of its obligations as set out in this *Clause 8.2*; and

(c) the Customer shall reimburse the supplier and Company on written demand for any costs or losses sustained or incurred by the supplier and Company arising directly or indirectly from the Customer Default.

8. CHARGES AND PAYMENT

8.1 The price for Goods:

(a) shall be the price set out in the Order Form or, if no price is quoted, the price set out in the Supplier's published price list as at the date of order; and

(b) shall be inclusive of all costs and charges of packaging, insurance, transport of the Goods.

8.2 The charges for Services shall be as set out in the Order Form or supplier's terms and conditions or both.

8.3 In respect of Goods, the Company shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Company shall invoice the Customer on signature of an Order Form and payment will be in advance on quarterly or annual basis as agreed with the Company. Customer will be invoiced only from the date of service commencement.

8.4 The Customer shall pay each invoice submitted by the Company:

(a) within 30 days of the date of the invoice [or in accordance with any credit terms agreed by the Company and confirmed in writing to the Customer;] and

(b) in full and in cleared funds to a bank account nominated in writing by the Company, and

time for payment shall be of the essence of the Contract.

8.5 All amounts payable by the Customer under the Contract 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 Contract by the Company to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

8.7 If the Customer fails to make a payment due to the Company under the Contract by the due date, then, without limiting the Company's remedies under *Clause 14* (Termination), 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 9.7* will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

8.8 All amounts due under the Contract 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).

8.9 The Company, may at its absolute discretion increase the charges for Services at the 12th (twelfth) month anniversary from the commencement of Contract and increase the charges based on the Consumer Price Index (CPI rate) plus 3.9%.

8.10 Charges will increase by an amount equal to the Consumer Price Index rate published by the Office for National Statistics in January either at the 12th month anniversary from the commencement of Contract where the terms of the Contract is for a period longer than 12 (twelve) months or at renewal of Contract at the expiry of 12 (twelve) month.

In the event that the CPI rate is negative, this will be ignored but the additional 3.9% will still apply.

8.11 The Company will provide the Customer with 30 (thirty) days' written notice of any increase in charges as provided under clause 8.9.

9. INTELLECTUAL PROPERTY RIGHTS

9.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the supplier or Company.

9.2 The Customer's right to use, licence, edit, or copy any of the documentation, system information, software, user manuals will be governed by the terms and conditions of use as notified by the supplier or Company or both.

10. DATA PROTECTION

10.1 Both parties will comply with all applicable requirements of the UK Data Protection Legislation. This *Clause 11* is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the UK Data Protection Legislation. In this *Clause 11*, **Applicable Laws** means (for so long as and to the extent that they apply to the Company) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means any UK Data Protection Legislation and any other law that applies in the UK.

10.2 The parties acknowledge that for the purposes of the UK Data Protection Legislation, the Customer is the controller and the Company is the processor.

10.3 Without prejudice to the generality of *Clause 10.1*, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the supplier for the duration and purposes of the Contract.

10.4 Without prejudice to the generality of *Clause 10.1*, the Customer shall ensure that any supplier it selects, is adequately compliant with the Applicable Laws in the provision of Goods or Services or both.

10.5 In the event of any processing of personal data by the Company, each party agrees that it will complete the data processing annexe as set out in Annex 1 (Data Processing Annex)

11. CONFIDENTIALITY

11.1 Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by *Clause 11.2*.

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

(a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this *Clause 11*; and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

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

12. LIMITATION OF LIABILITY

12.1A The limits and exclusions in this clause reflect the insurance cover the supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.

12.1B The Customer shall maintain appropriate insurances at adequate levels as recommended by the Department for Education and required for its operations.

12.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

(a) death or personal injury caused by negligence;

(b) fraud or fraudulent misrepresentation; and

(c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

12.3 Subject to *Clause 12.2*, the Company's total liability to the Customer shall not exceed (fifty) percent of aggregate fees or charges paid by the Customer in the 3 (three) months prior to the occurrence of the incident giving rise to the claim.

12.4 Subject to *Clause 12.2*, the Customer's total liability to the Company or supplier or both in respect of all breaches of duty occurring within any contract year shall not exceed twice the value of the aggregate fees or charges payable or paid or both in the 12 (twelve) months prior to the occurrence of the incident giving rise to the breach.

12.5 Neither party is liable for:

- (i) Loss of profits.
- (ii) Loss of sales or business.
- (iii) Loss of agreements or contracts.
- (iv) Loss of anticipated savings.
- (v) Loss of use or corruption of software, data or information.
- (vi) Loss of or damage to goodwill.
- (vii) Indirect or consequential loss.

12.5 This *Clause 12* shall survive termination of the Contract.

13. TERMINATION

13.1 (a) Unless agreed otherwise in writing within an order form and subject to clause 13.1(b), without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party not less than 2 (two) months' written notice, provided

- i) where the initial term is for a period of 12 (twelve months) the notice of termination expires on the 12 (twelve) month anniversary from commencement of Contract; or
- ii) Where the initial term is for a period other than stated in 13.1.(a) (i) above, the notice of termination expires at the end of the initial term set out in the relevant Order Form.

13.1 (b) In the event of termination of Contract in accordance with Clause 13.1 (a), the Customer will remain liable to pay all charges and fees for the remainder of the term as indicated in the Order Form.

13.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 180 (One hundred and eighty) days after receipt of notice in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

13.3 Without affecting any other right or remedy available to it, the Company may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

13.4 Without affecting any other right or remedy available to it, the Company may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Company if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in *Clause 13.2(b)* to *Clause 13.2(d)*, or the Company reasonably believes that the Customer is about to become subject to any of them.

13.5 Notwithstanding anything contained within this agreement, the Customer will be entitled to terminate this Contract under Clause 13.2 (a) only after if exhausts any escalation, dispute resolution or mediation procedure as set out under the terms of conditions of supply of goods or services of the relevant third party supplier(s).

14. CONSEQUENCES OF TERMINATION

14.1 On termination of the Contract:

(a) the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt;

(b) the Customer shall return all of the Company materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then the Company may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

14.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

14.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

15. FORCE MAJEURE

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

16. GENERAL

16.1 Assignment and other dealings

(a) The Company may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

(b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Company.

16.2 Notices.

16.1 (a) Any notice or other communication given to a party under or in connection with this agreement shall be in writing and shall be:

(i) 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

(b) Any notice or communication shall be deemed to have been received:

(i) if delivered by hand, on signature of a delivery receipt; and

(ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and

(iii) 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 16 (1) (b) (iii) 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.

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

16.3 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

16.4 Waiver. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

16.5 No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

16.6 Entire agreement.

(a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

(b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

16.7 Third party rights.

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

16.8 Variation. Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

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

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

Annex 1
Data Processing Annex

S. No.	Details of personal data processed	Scope of processing	Security measures

