



# Subscription Agreement

## 1. Introduction

- 1.1. This subscription agreement (“Terms”) governs your (“Customer”) subscription for and use of the Maths Assessment Web application and/or the Times Tables Fun Web application (“Product”) made available by Professor Assessor Ltd registered in England and Wales (Company No. 9953864) (“Supplier”).
- 1.2. The Product is available via the internet and suitable Web browsers to schools and equivalent educational establishments with a valid subscription where the subscription is either a Free Trial Subscription or a Full Subscription as defined in section 2.
- 1.3. The Terms are accepted by the Customer upon requesting a Free Trial Subscription or a Full Subscription of the Product or requesting a renewal of any such subscription.

## 2. Definitions, interpretation and scope

- 2.1. In this agreement, unless otherwise provided:

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

**Activated Class** means school classes of the Customer that have been activated by the Supplier within the Product as part of the User Subscription.

**Additional Activities** means enhanced support services to include but not limited to training or consultancy services which are not within the Supplier's standard customer support services and which are charged to the Customer by the Supplier as described in section 8.

**Authorised Users** means those employees or agents of the Customer who are authorised by the Customer to use the Product and the Documentation, as further described in section 3 whilst acting in the course of their employment with the Customer and whom work from the Customer's main business premises (including a particular school or learning establishment) or remotely where such a user is based at the main business premises and has been authorised as such previously by the Customer. If the Customer has multiple sites it can apply to the Supplier for permission to add Authorised Users who are based away from the designated main business premises which the Supplier at its sole discretion may authorise (this may involve the charging of further fees subject to fair negotiation and agreement). Authorised Users additionally means currently enrolled pupils of the Customer that are in an Activated Class of the Customer as further described in clause 3.

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

**Customer Data** means the data inputted by the Customer, Authorised Users, or the Supplier on the Customer's behalf for the purpose of using the Product or facilitating the Customer's use of the Product.

**Data** means the **Customer Data** and/or **Derived Data** stored within the Product.



**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 Customer Data or such that it can be so identified.

**Distribute** means to make Data accessible (including the provision of access via the Product, re-selling, sub-licensing, transferring or disclosing the Data) by any means, including any electronic means, to any person not an Authorised User.

**Documentation** means the document(s) made available to the Customer by any means which sets out a description of the Product and the user instructions for the Product.

**Effective Date** is the first date of the Subscription Term and Renewal Period.

**Free Trial Subscription** has the meaning given in 3.2 (being a limited period of time as set by the Supplier during which a Customer is provided restricted access free of charge to the Product).

**Full Subscription** has the meaning given in clause 3.1 (being a period of time as set by the Supplier during which a Customer is provided full access for a fee to the Product).

**Initial Subscription Term** means the initial period of this agreement and is defined as the first 12 month period during which a Customer purchases a Full Subscription.

**Mandatory Policies** are the Supplier's business policies and codes listed in Schedule 1, as amended by notification to the Customer from time to time.

**Office Closure** means a period of time during which the Supplier has designated a time of office closure in order to help ensure focussed provision of service when schools are within term time. Any scheduled Office Closure will be displayed in advance on the Supplier website. Office Closures are additionally used for major Updates.

**Renewal Period** means a period of one year following the Initial Subscription Period during which the Customer subscribes to the Product.

**School Administrator** means the Authorised User notified to the Supplier by the Customer as the main recipient of support from the Supplier. By supplying a School Administrator, the Customer asserts that the said School Administrator has the authority to bind the Customer in all dealings and agreements between the Customer and the Supplier. Any information supplied to the School Administrator by the Supplier will be treated as having been supplied to the Customer.

**Services** means the subscription services provided by the Supplier to the Customer under this agreement and includes the provision of the Product and Documentation together with support services during the Subscription Term. The Supplier reserves the right to alter or amend the Services from time to time without prior notice to the Customer of the alteration or amendment coming into effect.

**Subscription Fee** is the amount payable by the Customer to the supplier for the User Subscription as set out in clause 8.

**Subscription Term** has the meaning given in clause 13.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

**Support Services Policy** means the Supplier's policy for providing support in relation to the Product as set out in Schedule 2.

**Update** means a maintenance release, correction, amendment, or update of the Product provided without additional charge to the Customer.

**User Subscription** means the user subscription purchased by the Customer pursuant to clause 8.1 that entitles the Authorised Users to access and use the Product and the Documentation in accordance with the terms of this agreement.



**Working Hours** means the hours between 0900 and 1700 GMT (or BST if applicable) in the United Kingdom, Monday to Friday excluding Bank Holidays in England and excluding scheduled Office Closures.

- 2.2. Clause, schedule and paragraph headings shall not affect the interpretation of any part of the terms of this agreement.
- 2.3. Unless the context otherwise requires a reference to one gender shall include all other genders and words in the singular shall include the plural and vice versa.
- 2.4. References to clauses and schedules are to the clauses and schedules of this agreement.

### 3. Subscriptions

- 3.1. Subject to the Customer's purchasing a User Subscription and acceptance of and compliance with the Terms of this agreement, the Supplier grants to the Customer a limited, non-exclusive, non-transferable and non-perpetual right, without the right to grant sub-licences, to permit Authorised Users to use the Product for the agreed number of users and solely for internal use of the Customer and this is termed a Full Subscription. The Customer is not allowed to copy, use or otherwise exploit the Product in any other manner than set forth in this agreement. All rights not expressly granted are reserved by the Supplier. Any contact outside the Authorised Users is made at the Customer's sole risk and the Customer warrants to take all care in not sharing any Customer Data in breach of any relevant law including new data protection laws as they come into force or the Data Protection Act 1998 or the General Data Protection Regulations (GDPR) and to indemnify the Supplier from any claim as a result of any transmission of Customer Data to any third party.
- 3.2. The Company may offer the Customer one trial subscription for the Product termed a Free Trial Subscription.
  - 3.2.1. The Free Trial Subscription is not subject to payment of subscription fees by the Customer.
  - 3.2.2. If the Customer does not purchase a Full Subscription to the Product before the trial period expires, the Company will without notification terminate the Customer's access to the Product upon expiry of the trial period and the Customer's trial account and data will be deleted as specified in our Privacy Policy.
  - 3.2.3. Subject to clauses 3.2.1 - 3.2.2, these Terms apply to the trial period of the Product. However, the Company does not have any obligations during the trial period and undertakes no liabilities for access and use or inability or failure to access or use of the Product.
- 3.3. The Product is accessible to the Customer at specific URLs designated by the Supplier in its sole discretion.
- 3.4. In relation to the Authorised Users, the Customer undertakes that:
  - 3.4.1. the maximum number of Activated Classes that it authorises to access and use the Product and the Documentation shall not exceed the number as agreed between the Supplier and Customer or set out in this agreement;
  - 3.4.2. the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number (if relevant) or type of user as agreed between the Supplier and Customer or set out in this agreement;



- 3.4.3. it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Product and/or Documentation;
  - 3.4.4. each Authorised User shall keep a secure password for his use of the Product and Documentation, such password shall be changed no less frequently than yearly and that each Authorised User shall keep his password confidential and take all reasonable endeavours to ensure that the Product is not accessed by anyone apart from the Authorised User.
  - 3.4.5. It will permit the Supplier to audit the Product. Such audit may be conducted at any time and at the Supplier's expense, in such a manner as not to substantially interfere with the Customer's use of the Product;
  - 3.4.6. if any of the audits referred to in clause 3.4.5 reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to the Supplier's other rights, the Customer shall promptly disable such passwords and the Supplier shall not issue any new passwords to any such individual; and
  - 3.4.7. if any of the audits referred to in clause 3.4.5 reveal that the Customer has underpaid Subscription Fees to the Supplier, then without prejudice to the Supplier's other rights, the Customer shall pay to the Supplier an amount equal to such underpayment as calculated in accordance with the prices as described in section 8 within seven Business Days of the date of the relevant audit.
  - 3.4.8. It will pay, if relevant, additional charges which may be levied if any of the Audits in clause 3.4.5 or if, for any other reason, it becomes apparent that anyone other than an Authorised User is using the relevant services backdated to the commencement of any services provided and any other costs, fees and expenses reasonably incurred.
  - 3.4.9. Any restrictions or obligations imposed on the Customer shall be observed by the Authorised Users and it shall be the Customer's responsibility to ensure that all users whether Authorised Users or not act in accordance with such requirements and obligations including but not limited to maintaining the confidentiality of any Customer Data.
  - 3.4.10. Authorised Users will communicate with the Supplier using the English language.
- 3.5. The Customer shall not and shall also ensure that Authorised Users or any others to which access to the Product has been given do not:
- 3.5.1. except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this agreement or by the supplier:



- 3.4.1.1. attempt to copy, modify, duplicate, create derivative works from, reproduce, print, store, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Product and/or Documentation (as applicable) in any form or media or by any means except where clearly indicated within the Product by means of a built-in Download function; or
- 3.4.1.2. attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Product; or
- 3.4.1.3. copy Free Content from the Product to create or compile any form of collection, compilation, directory or database unless expressly permitted by the supplier.
- 3.5.2. access all or any part of the Product and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
- 3.5.3. use the Product and/or Documentation to provide services to third parties; save for recording students' progress, performing statistical review and delivering presentations to other Authorised Users or external authorities expressly authorised by the Supplier or
- 3.5.4. subject to clause 21.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Product and/or Documentation available to any third party except the Authorised Users, or
- 3.5.5. attempt to obtain, or assist third parties in obtaining, access to the Product and/or Documentation, other than as provided under this clause 3; and
- 3.5.6. place a link to the Professor Assessor Ltd other than to the home page of the website [www.professorassessor.co.uk](http://www.professorassessor.co.uk) or deep link without express written authorisation of the Supplier.
- 3.5.7. use the Product and/or Documentation for the purpose of mass-communication such as spam or junk mail.
- 3.5.8. use the Product and/or Documentation to engage in any form of advertising. The customer is not prohibited from referring to another business or organisation for non-promotional purposes where advertising may be incidental.
- 3.6. The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Product and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.
- 3.7. The Customer is responsible for notifying the Supplier if any Authorised Users or passwords are to be revoked immediately together with the details and passwords for any substituted Authorised User.
- 3.8. The Customer is solely responsible for maintaining security of passwords and for all access to and use of the Product by anyone by means of the Customer's or its employees' or agents' or pupils' equipment.
- 3.9. The Customer shall use its reasonable endeavours and indemnify the Supplier from any claim in relation to keeping any data and Customer Data stored securely and to preventing any unauthorised Third Party from accessing, copying or duplicating the same.
- 3.10. The Customer agrees to indemnify the Supplier against any use of any passwords supplied or chosen by the Customer or any other user through the Customer including Authorised Users in breach of this Agreement including use by a Third Party.



- 3.11. Any rights provided under this clause 3 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company or associated organisation of the Customer.

## 4. Services

- 4.1. The Supplier shall, during the Subscription Term, provide the Services and make available the Product and Documentation to the Customer on and subject to the Terms of this agreement.
- 4.2. The Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- 4.2.1. planned maintenance carried out during the maintenance window of 10.00 pm to 7.00 am UK time; and
  - 4.2.2. unscheduled maintenance performed outside normal Working Hours; and
  - 4.2.3. emergency bug fixes required for the continued provision of the Service as described in the Terms of this agreement; and
  - 4.2.4. emergency shutdown periods following the identification of a data breach;
- 4.3. The Customer acknowledges and accepts that it is the sole responsibility of the Customer to investigate and assess the Product in order to ensure that it can operate and function in conjunction with the Customer's needs and requirements, including the Customer's Internet access, hardware and software.
- 4.4. The Company undertakes no obligations or liability with respect to the provision of telecommunication lines, Internet subscriptions or connections or any other technical means necessary for the Customer to access and use the Product or its data and any and all costs and risks in this respect remains solely with the Customer.
- 4.5. The Supplier will unless otherwise agreed, as part of the Services and at no additional cost to the Customer unless agreed otherwise in writing provide the Customer through contact with the School Administrator with the Supplier's standard customer support services during Working Hours in accordance with and as defined by the Supplier's current Support Services Policy as set out in Schedule 2 in effect at the time that the Services are provided. The Supplier may amend the Support Services Policy in its sole and absolute discretion from time to time. The Supplier reserves the right to respond to queries from Authorised Users through the School Administrator.
- 4.6. The Customer may purchase enhanced support services (Additional Activities) separately at the Supplier's then current rates.
- 4.7. The Supplier as far as is reasonably possible will keep the Product compatible and operational with the most recent official versions of the Internet browsers: Google Chrome for Windows and Android; Microsoft Edge and Firefox for Windows; Safari for OS and iOS - but does not guarantee that the Product will work identically in these aforementioned browsers and reliably with all other Internet browsers. The Supplier reserves the right to recommend specific browsers to Customers and to at any time repeal compatibility of the Product with any of the herein mentioned browsers if it is found that a browser is incompatible with required HTML and/or XHTML and/or JavaScript standards.



## 5. Customer Data

- 5.1. The Customer shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 5.2. The Supplier shall so far as is reasonable follow its procedures for Customer Data as set out in its Backup and Disaster Recovery Policy as set out in Schedule 3, such document may be amended by the Supplier in its sole discretion from time to time. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier in accordance with the Suppliers Backup and Disaster Recovery Policy. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by the Supplier and/or any third party.
- 5.3. If the Supplier processes any personal data on the Customer's behalf when performing its obligations under this agreement, the parties record their intention that the Customer shall be the data controller and the Supplier shall be a data processor and in any such case:
  - 5.3.1. the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to the Supplier so that the Supplier may lawfully use, process and transfer the personal data in accordance with this agreement on the Customer's behalf;
  - 5.3.2. the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation including the Data Protection Act 1998 and the General Data Protection Regulations so far as any are in force.
  - 5.3.3. the Customer acknowledges and agrees that the personal data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to carry out the Services and the Supplier's other obligations under this agreement;
  - 5.3.4. the Supplier shall process the personal data in accordance with the Terms of this agreement and any lawful instructions reasonably given by the Customer from time to time; and
  - 5.3.5. each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.
  - 5.3.6. the Customer acknowledges and agrees that the Supplier reserves the right to monitor any and all Customer Data.

## 6. Supplier's Obligations

- 6.1. The Supplier undertakes that the Services will be performed substantially in accordance with the Terms of this agreement and any Documentation supplied to the Customer and with reasonable skill and care.
- 6.2. The undertaking at clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, the Supplier will, at its expense, use



all reasonable commercial endeavours to correct any such non-conformance within a reasonable time, and/or, if deemed appropriate by the Supplier, provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 6.1. Notwithstanding the foregoing, the Supplier:

6.2.1. does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and

6.2.2. 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 Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities; and

6.2.3. is not responsible for Customer's equipment not being capable of supporting the Services and that the performance of the Services may vary depending on the equipment and communications facilities used by the Customer.

6.3. This agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement.

## 7. Customer's Obligations

7.1. The Customer shall:

7.1.1. provide the Supplier with:

7.1.1.1. all necessary co-operation in relation to this agreement; and

7.1.1.2. all necessary access to such information as may be required by the Supplier;

in order to provide the Services, including but not limited to Customer Data;

7.1.2. not supply details or authorise users to anyone not entitled under these Terms with access to the Services;

7.1.3. comply with all applicable laws and regulations with respect to its activities under the Terms of this agreement;

7.1.4. carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;

7.1.5. ensure that the Authorised Users use the Services and the Documentation in accordance with the Terms of this agreement and shall be responsible for any Authorised User's breach of this agreement and ensure that it has adequate security and procedures for protecting the Customer Data;

7.1.6. obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this agreement, including without limitation the Services;





- 7.1.7. ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- 7.1.8. be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

## 8. Fees and payment

- 8.1. The Customer shall pay the Subscription Fees to the Supplier for the User Subscriptions for a Full Subscription in accordance with this clause 8.
- 8.2. The Subscription Fees will be those applicable and published on the [www.professorassessor.co.uk](http://www.professorassessor.co.uk) website at the time of the commencement of the Subscription Term or any subsequent Renewal Period unless otherwise agreed between the Customer and the Supplier.
- 8.3. The Customer shall prior to the Effective Date provide to the Supplier approved purchase order information acceptable to the Supplier and any other relevant valid, up-to-date and complete contact and billing details; and
- 8.4. the Supplier shall invoice the Customer:
  - 8.4.1. on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
  - 8.4.2. subject to clause 13.1, at least 30 days prior to or prior to each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period,
  - 8.4.3. or further to any other agreed basis between the parties made in writing,and the Customer shall pay the Subscription Fees in respect of the Initial Term on the Effective Date and in respect of any Renewal Period within 30 days of the date of such invoice referred to in clause 8.4 above.
- 8.5. If the Supplier has not received payment from the Customer within the applicable time periods set out in clauses 8.4 above, and without prejudice to any other rights and remedies of the Supplier:
  - 8.5.1. the Supplier may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
  - 8.5.2. interest shall accrue on a daily basis on such due amounts at an annual rate equal to 8% over the then current base lending rate of 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 judgment.
- 8.6. All amounts and fees stated or referred to in this agreement:
  - 8.6.1. shall be payable in pounds sterling;
  - 8.6.2. are, subject to any clause in this agreement, non-cancellable and non-refundable;



- 8.6.3. are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 8.7. The Supplier shall be entitled to increase the Subscription Fees and Renewal Fees upon giving 90 days' notice to the Customer prior to the start of the next Renewal Period.
- 8.8. The Supplier reserves the right to charge the Customer for Additional Activities which are cancelled or postponed by the Customer in the following way:
  - 8.8.1. the full fee for the Additional Activities if notice is not given by the Customer of their wish to cancel or delay the Additional Activities by no later than 5 full Business Days prior to the Additional Activities commencing;
  - 8.8.2. 50% of the fee for the Pre-Scheduled Activity if notice is not given by the Customer of their wish to cancel or delay the Additional Activities by no later than 10 full Business Days prior to the Additional Activities commencing.

## 9. Proprietary rights

- 9.1. The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, this agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.
- 9.2. The Supplier confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the Terms of this agreement.

## 10. Confidentiality and compliance with policies

- 10.1. Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:
  - 10.1.1. is or becomes publicly known other than through any act or omission of the receiving party;
  - 10.1.2. was in the other party's lawful possession before the disclosure;
  - 10.1.3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure;  
or
  - 10.1.4. is independently developed by the receiving party, which independent development can be shown by written evidence.
- 10.2. Subject to clause 10.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.
- 10.3. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of this agreement.



- 10.4. A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 10.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 10.5. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 10.6. The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.
- 10.7. The provisions of this clause 10 shall survive termination of this agreement, however arising.
- 10.8. In performing its obligations under this agreement the Customer shall comply with the Mandatory Policies.

## 11. Indemnity

- 11.1. The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation, provided that:
  - 11.1.1. the Customer is given prompt notice of any such claim;
  - 11.1.2. the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
  - 11.1.3. the Customer is given sole authority to defend or settle the claim.
- 11.2. The Supplier warrants to the Customer that the Services do not infringe any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
  - 11.2.1. the Supplier is given prompt notice of any such claim;
  - 11.2.2. the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
  - 11.2.3. the Supplier is given sole authority to defend or settle the claim.
- 11.3. In the defence or settlement of any relevant claim made, the Supplier may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on 5 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 11.4. For the avoidance of doubt, in no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement of any patent is based on:



- 11.4.1. a modification of the Services or Documentation by anyone other than the Supplier; or
  - 11.4.2. the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by the Supplier; or
  - 11.4.3. the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.
- 11.5. The foregoing and clause 12.3.2 states the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and subcontractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

## 12. Limitation of liability

- 12.1. Except as expressly and specifically provided in this agreement:
- 12.1.1. the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction.
  - 12.1.2. all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and
  - 12.1.3. the Services and the Documentation are provided to the Customer on an "as is" basis.
  - 12.1.4. The Supplier makes no representation and gives no warranty that the Services will meet the Customer's Requirements or be of satisfactory quality or fit for purpose, that it will not infringe third party rights, that it will be compatible with all computer systems, or that it will be secure.
  - 12.1.5. The Supplier makes no representations and gives no warranties that the Services will be accurate or up to date or that it will provide specific results.
  - 12.1.6. The Customer acknowledges that the Provision of the Services entails the likelihood of some human and machine errors.
- 12.2. Nothing in this agreement excludes the liability of the Supplier:
- 12.2.1. for death or personal injury caused by the Supplier's negligence; or
  - 12.2.2. for fraud or fraudulent misrepresentation.
- 12.3. Subject to clause 12.1 and clause 12.2:
- 12.3.1. the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and



- 12.3.2. the Supplier's total aggregate liability in contract (including in respect of the potential liability at clause 11.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the total Subscription Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.

## 13. Term and termination

- 13.1. This agreement shall, unless otherwise terminated as provided in this clause 13, commence on the Effective Date and shall continue for the Initial Subscription Term (for new Customers) or Renewal Period (for existing Customers) and, thereafter, this agreement shall be automatically renewed for successive periods of 12 months (each a Renewal Period), unless:
  - 13.1.1. The Customer notifies the Supplier of termination, in writing, at least 90 days before the end of the Initial Subscription Term or any Renewal Period, in which case this agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
  - 13.1.2. otherwise terminated in accordance with the provisions of this agreement; and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the Subscription Term.
- 13.2. Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:
  - 13.2.1. the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
  - 13.2.2. the other party commits a material breach of any other term under this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 20 Business Days after being notified in writing to do so;
  - 13.2.3. the other party repeatedly breaches any of the Terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the Terms of this agreement;
  - 13.2.4. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 ;
  - 13.2.5. the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - 13.2.6. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;



- 13.2.7. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
  - 13.2.8. the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
  - 13.2.9. a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
  - 13.2.10. a creditor or encumbrance of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
  - 13.2.11. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.2.4 to clause 13.2.10 (inclusive);
  - 13.2.12. the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
  - 13.2.13. there is a change of control of the other party; or
- 13.3. Notwithstanding the above, the Supplier reserves the right to terminate this agreement with immediate effect at any time.
- 13.4. On termination of this agreement for any reason:
- 13.4.1. all licences granted to the Customer under this agreement shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Documentation;
  - 13.4.2. each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
  - 13.4.3. the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than 14 days after the effective date of the termination of this agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). Thereafter, the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession within a reasonable period. The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data; and
  - 13.4.4. any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.
- 13.5. On termination of this agreement as a result of the Customers breach of this agreement the Supplier shall be entitled to retain any and all payments made by the customer to the Supplier up to and including the termination of the Subscription Term.



13.5.1. If the Supplier terminates this agreement for any reason other than those set out in clauses 13.2.1 to 13.2.13 inclusive above the Supplier will refund the Customer any remaining balance of the Subscription Fee. Such refund shall be calculated based upon the fee being divided by the number of days in the Subscription term multiplied by the number of days remaining in the Subscription Term.

## 14. Force majeure

The Supplier shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

## 15. Conflict

If there is an inconsistency between any of the provisions in the main body of this agreement and the Schedules, the provisions in the main body of this agreement shall prevail.

## 16. Variation

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## 17. Waiver

No failure or delay by the Supplier to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## 18. Rights and remedies

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

## 19. Severance

19.1. If any provision (or part of a provision) of this 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. This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 20.2. Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.
- 20.3. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- 20.4. Nothing in this clause shall limit or exclude any liability for fraud.

## 21. Assignment

- 21.1. The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.
- 21.2. The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

## 22. No partnership or agency

Nothing in this 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

This agreement does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

## 24. Notices

- 24.1. Any notice required to be given under this 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 in this agreement, or such other address as may have been notified by that party for such purposes, and if sent to the Supplier also copied by email to [enquiries@professorassessor.co.uk](mailto:enquiries@professorassessor.co.uk) as set out in this agreement or any further email address as notified to the Customer by the Supplier.

- 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 3 days after the post mark subject to it being sent by first class post and if sent by second class post 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 transmission (as shown by the timed printout obtained by the sender) or the next business day if transmitted outside of normal business hours or on a Saturday, Sunday or public holiday in England.

## 25. Governing law

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

## 26. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims). This has been entered into on the date stated at the beginning of it.



## Schedule 1 – Mandatory Policies

### 1. Privacy Policy

Your privacy is important to us. By using our Maths Assessment Web Application available at [www.prof123.co.uk](http://www.prof123.co.uk) you are agreeing to be bound by our Privacy Policy. We may occasionally update the Privacy Policy so please check this link from time to time to ensure you are happy with any changes we've made.

### 2. Cookies

A computer cookie is a small piece of information that is stored by your browser on your computer.

We use cookies to distinguish you from other users of our Maths Assessment Web Application. The data in these cookies is encrypted.

Your browser must be set to accept all our cookies in order for you to use our Maths Assessment Web Application.

For more information see our Privacy Policy.

### 3. Further Information

We process personal data within our Maths Assessment Web Application on behalf of Schools. The Schools are the data controller for your personal information. If you would like to find out what personal information we process or for us to cease using your personal data then please contact the relevant school.



## Schedule 2 - Support Services Policy

### 1. Support

- 1.1. The nominated School Administrator should act as the first level of support for all Authorised Users of the Product.
- 1.2. The Supplier will make available support services to the School Administrator only.
- 1.3. Emails that are submitted before 12pm to the Supplier by the School Administrator shall be processed as far as possible between 9.00am and 5.00pm on the same Business Day in which they are received. Emails submitted after 12pm to the Supplier by the School Administrator shall be processed as far as possible on the following Business Day in which they are received.
- 1.4. Telephone support will be available on 01249 588850 on Business Days within Working Hours so far as reasonably practicable.
- 1.5. Enhanced support services are available upon request at an additional cost.



## Schedule 3 – Backup and Disaster Recovery Policy

### 1. Hosting

The Maths Assessment and Times Tables Fun products by Professor Assessor Ltd are both Web Applications and hosted remotely from both the Customer and the Supplier sites.

The security of personal data is extremely important to us and we take appropriate and proportionate physical, technical and operational measures to protect the data.

We host the Product and associated data at data centres located within the United Kingdom based principally at Telehouse Europe in London Docklands and Reading. Data is therefore hosted within and does not leave the UK.

Our Maths Assessment and Times Tables Fun web applications are hosted with Catalyst2 Services Ltd which own their UK data centres and provide a 24x7x365 support service. They are ISO 27001 Information Security Management and ISO 9001 Quality Management certified.

Professor Assessor Ltd is registered with the Information Commissioner's Office (ICO) and comply with the Data Protection Act (DPA) legislation and General Data Protection Regulations (GDPR). Our ICO registration number is: ZA361224. Our key staff are trained in the General Data Protection Regulations (GDPR) and understand our obligations.

### 2. Backup Policy

The Maths Assessment and Times Tables Fun Web applications together with their respective databases are fully backed up and encrypted daily at one of the data centres we use, being physically distinct from the Professor Assessor Ltd offices.

The applications are also permanently and incrementally backed up together with incremental daily encrypted database backups at the Professor Assessor Ltd offices.

### 3. Disaster Recovery

Our disaster recovery procedures include personnel and infrastructure redundancy ensuring that systems are recovered and reinstated in a swift and reliable manner.