

SupplyWell Ltd

Terms & Conditions of Services

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PART A: General Terms and Conditions

1. Services

- a) These Terms and Conditions ("Conditions") govern the relationship between the Customer and SupplyWell Limited (incorporated under the laws of England and Wales, with company number 11034617) or one or more of its affiliated companies ("SupplyWell"), relating to the provision of services ("Services") as set out in more detail in a document agreed between SupplyWell and the Customer, which may be an order form, a SOW, a letter or a statement of services or other defined document (the "Order Form"). The entire agreement between the parties (the "Agreement") comprises the Order Form and these Conditions only. In the event that there is a difference between the terms of the Order Form and these Conditions, the Order Form will prevail. Where more than one Order Form is executed between the parties, each one will constitute a separate Agreement.
- b) These Conditions comprise three parts. This Part A includes general terms and conditions applicable to the supply of all Services. Part B applies to the provision of access to the SupplyWell Platform and associated SAAS Services, and Part C applies to the supply of Supply Educators. To the extent that there is any conflict between Part B or Part C and this Part A, in relation to the specific Services being supplied, the latter Part will take precedence.
- c) In addition, the Customer will need to agree to the privacy policy of SupplyWell from time to time, as found at <https://www.supplywell.co.uk/privacy-policy>. By accessing the SupplyWell Platform, and using the Services, the Customer indicates their agreement to the privacy policy.
- d) Where a Customer wishes to upgrade any level of service, for example by increasing its subscription, or by purchasing a higher volume of Services, and the price has been agreed upon by SupplyWell in advance, the Customer may do so by notifying SupplyWell at sales@supplywell.co.uk.
- e) Where the Customer has used at least 75% of their credits, SupplyWell reserves the right to auto-renew the credits issued to the Customer and invoice the Customer for such credits one month before the current credits are expected to be fully utilised.
- f) Where the Customer otherwise wishes to make any proposed changes to any Services, such changes must be requested in writing by the Customer with sufficient detail to enable SupplyWell to assess the impact of the requested change on the cost, timing, or any other aspect of the Services. In the event any changes are substantial deviations from the Services, SupplyWell shall promptly set forth in writing for the

client any additional costs or time necessary to implement such changes. Any changes, and any consequent impacts on timing, cost, or anything else must be set out in writing and signed by both parties. Until such a change is agreed to in writing the Agreement shall apply unamended.

- g) In the event that SupplyWell wishes to make any proposed changes to any Services, it shall request such changes in writing, setting out the reasons for the proposed changes, and any impact on any cost, timing, or any other aspect of the Services. Any changes, and any consequent impacts on timing, cost, or anything else must be set out in writing and signed by both parties. Until such a change is agreed to in writing the Agreement shall apply unamended.
- h) The Services may be accessed by the Customer and by its authorised users. Where the Customer authorises any users to access the Services, the Customer will
 - (i) ensure that the authorised user is aware of these Conditions and agrees to them and the privacy policy, and
 - (ii) remain liable for the acts and omissions of the authorised users as if they perpetrated the acts or omissions themselves.
- i) Unless specifically agreed between SupplyWell and the Customer, no Customer may access the Services on behalf of another member of its Group.
- j) For the purposes of this Agreement, reference to a “Group” of a party shall mean
 - (i) any individual, company, partnership, statutory body, or other entity which from time to time Controls the Customer, including (but not limited to) as a holding company as defined in section 1159 of the Companies Act 2006; and
 - (ii) any company, partnership, statutory body, or other entity which from time to time is Controlled by or is under common Control with the party, including (but not limited to) as a subsidiary or holding company as defined in section 1159 of the Companies Act 2006; and
 - (iii) in the case of a school that is a member of a multi-academy trust, any other school in that Multi Academy Trust.

2. Charges

- a) The charges for any of the Services, and the frequency of payments, will depend upon
 - (i) the nature of the Services;
 - (ii) the level of subscription (if any) agreed between the parties; and
 - (iii) the rates for such Services agreed between the Customer and SupplyWell.
- b) Typically, charges for access to the SupplyWell Platform and service are based on a subscription model and are paid on a credit bundle basis in advance.
- c) The Customer will pay the Charges within 7 days of the date of the invoice in line with the Company Credit Control Policy.
- d) Discounted rates are only available with pre-payment of credits by way of the subscription service. Discounts increase with number of credits ordered. Pre-payment of credit bundles is required to receive discount. Non discounted rate is termed the standard PAYG rate.
- e) Charges for the supply of Supply Educators are invoiced weekly in arrears.

- f) All amounts payable that are stated in this Agreement or on the Order Form are exclusive of any applicable VAT and other taxes, which shall be added to those amounts and payable by the Customer to SupplyWell.
- g) Unless agreed otherwise in any Order Form, SupplyWell shall be entitled to increase its charges for any Services once in any 12-month period, which will take place either at the next renewal or subsequent invoice upon 30 days' prior notice to the Customer and the Fees and charges shall be deemed to have been amended accordingly.
- h) If the Customer believes that SupplyWell has billed the Customer incorrectly, the Customer must contact SupplyWell in writing no later than 7 days after the issue date of the invoice in which the error or problem appeared setting out the reasons why it believes that the invoice was incorrect, with a request to receive an adjustment or credit. Notwithstanding this, any undisputed amounts on the invoice shall be paid within 7 days following the issuing of an invoice to the Customer.
- i) Without prejudice to any of its other rights, if the Customer fails to make any payment within 35 days of the invoice date, SupplyWell reserves the right to put in place its late payment procedure in line with the Company Credit Control Policy:
 - (i) for overdue subscription service invoices - charge the Customer on the basis of daily standard rates as opposed to the preferential subscription service rates agreed in the Order Form;
 - (ii) for all overdue invoices - charge interest on the outstanding amount from the due date until payment is made in full at the "statutory interest" rate of 8% per annum above the Bank of England base rate under the Late Payment of Commercial Debts (Interest) Act 1998.
- j) Subscriptions automatically renew on a credit bundle basis, unless cancelled by the requisite notice in advance.
- k) Credit bundle renewal will be automatic for the same number and type of credits unless changed by request from the customer.
- l) An auto-renewal invoice will be issued when 75% of total Credits have been used. Credit balances can be obtained from SupplyWell at any time.
- m) The Credits will be available from the payment date of this renewal invoice.
- n) Credits that are not used will be carried over to the following term.

3. Further Obligations of the Parties

- a) SupplyWell shall:
 - (i) use its reasonable endeavours to complete the Services in accordance with the timetable for the Services, if any, or, where no timetable is specified, within a reasonable period of time; and
 - (ii) utilise sufficient numbers of suitably skilled and appropriately experienced and capable personnel to perform its obligations hereunder. Time is not of the essence in relation to the provision of any Services.
- b) SupplyWell shall provide the Services with reasonable skill and care. In the event that SupplyWell fails to do so, for any reason (other than where such shortcoming is attributable to any delay or default of Customer, or any of its employees, agents, officers, or contractors), the Customer's sole remedy is to request SupplyWell to

re-perform the Services in accordance with this Agreement, and SupplyWell shall use reasonable endeavours to correct any shortcomings promptly.

- c) In relation to all Services, the Customer shall promptly, and to the extent reasonably required in order to enable SupplyWell to perform the Services:
 - (i) cooperate with SupplyWell in all matters relating to the Services;
 - (ii) obtain all necessary licences, permissions, and consents required for SupplyWell to perform the Services
 - (iii) provide SupplyWell personnel access to the relevant Customer personnel with knowledge to support the performance of the Services, and to such systems of the Customer that SupplyWell may reasonably require in order to provide the Services; and
 - (iv) provide documentation, data, and/or other information or materials that SupplyWell reasonably requests or may reasonably require in order to provide the Services.
- d) Without prejudice to the foregoing, the Customer agrees to access the SupplyWell Services on such systems and equipment recommended by SupplyWell from time to time.
- e) The customer agrees to comply with all applicable laws and regulations with respect to its activities under this Agreement.
- f) SupplyWell shall have no liability for any breach or delay to the extent such is attributable to the failure of the Customer to comply with the requirements of this Condition 3, and any timescales for performance by SupplyWell shall be extended to take account of any delay caused by the same.

4. Intellectual Property

- a) In this condition, "Intellectual Property Rights" means patents, patentable rights, copyright, design rights, utility models, trademarks (whether or not any of the above are registered), trade names, rights in domain names, rights in inventions, rights in data, database rights, rights in know-how and confidential information, and all other intellectual and industrial property and similar or analogous rights existing under the laws of any country and all pending applications for and right to apply for or register the same (present, future and contingent, and including all renewals, extensions, revivals and all accrued rights of action).
- b) SupplyWell, a SupplyWell Group member and/or its licensors shall, as between the parties, remain the owner of all Intellectual Property Rights in SupplyWell's brands, software, database, trademarks and logos, Services, and the Software (as defined in Part B) as the same may be developed, created, adapted, altered, improved or amended from time to time whether as a result of the delivery of the Services or otherwise. Except as expressly permitted by this Agreement, the Customer may not use any of SupplyWell's Intellectual Property Rights without SupplyWell's prior written consent.
- c) In the course of the delivery of the Services by SupplyWell and use of the Services by the Customer and/or any Authorised Users, SupplyWell may obtain feedback from the Customer or any Authorised Users and/or any Licensed Users, and/or may gain insights into the way the Customer and/or any Authorised Users and/or any Licensed Users use the Services or any other services of SupplyWell. In addition to the extent to which the Services incorporate any AI, they may adapt simply from the use of the Services. SupplyWell shall own all Intellectual Property Rights in any adaptations,

modifications, alterations, developments, additions, or changes that result from such feedback or insights or operation of AI, whether directly or indirectly. Further, SupplyWell shall have the right to incorporate any feedback into its services and/or the SupplyWell Platform.

- d) The Customer shall promptly bring to the attention of SupplyWell any improper or wrongful use of any Intellectual Property Rights of SupplyWell that comes to the Customer's notice. The Customer shall assist SupplyWell as reasonably required by SupplyWell in taking all steps to defend SupplyWell's Intellectual Property Rights, but shall not institute legal proceedings of its own accord.
- e) SupplyWell and/or a SupplyWell Group Member shall own and retain all rights, title, and interest in and to:
 - (i) the Services and Software, all improvements, enhancements, or modifications thereto;
 - (ii) any software, applications, inventions, or other technology developed in connection with the Services;
 - (iii) deliverables and work product (including drafts) arising in the course of the provision of the Implementation Services; and
 - (iv) all intellectual Property Rights related to any of the foregoing.
- f) Nothing in this Agreement shall operate to assign or transfer any intellectual Property Rights from SupplyWell to the Customer. The Customer warrants to SupplyWell that any data it supplies to SupplyWell and the use of the same by or on behalf of SupplyWell in accordance with this Agreement will not infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law or regulation.
- g) The Customer hereby grants to SupplyWell a worldwide, non-exclusive license to use its trademarks, logos, and other necessary intellectual property in any fundraising, marketing, or promotional materials whether online or offline, including, but not limited to, on SupplyWell's website or other medium, and SupplyWell may provide a broad description of the nature of the Services provided by SupplyWell to Customer.

5. Data

- a) In this Agreement, "Customer Data" means all data, information, know-how, material, or input provided by the Customer to SupplyWell or uploaded to any Software or transmitted through the Services by or for the Customer and/or any Authorised User.
- b) The Customer agrees that SupplyWell and its contractors are entitled to access and use the Customer Data for the purposes of providing the Services. The Customer grants to SupplyWell and its contractors a non-exclusive, personal, royalty-free license during the term of this Agreement to use the Customer Data for the purposes of providing the Services.
- c) The Customer shall own all rights, titles, and interests in the Customer Data. The Customer shall have sole responsibility for the legality, reliability, integrity, accuracy, and quality of the Customer Data.
- d) In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for SupplyWell to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such

Customer Data maintained by SupplyWell in accordance with the archiving procedure described in its Data Security Policy in force from time to time.

- e) SupplyWell shall not be responsible for any loss, destruction, alteration, or disclosure of Customer Data caused by any third party (except those third parties subcontracted by SupplyWell to perform services related to Customer Data maintenance and backup).
- f) The Customer shall indemnify SupplyWell against all loss or damage that SupplyWell incurs or suffers however arising as a result of or in connection with the Customer's use of Customer Data in accordance with this Agreement and/or any claim by a third party as a result of the Customer's use of the Customer Data and/or the Services.
- g) The parties acknowledge and agree that SupplyWell may generate insights into the Services and the use of the Services from Customer Data, and from the frequency and mode of use of the Services by the Customer and the Authorised Users, as well as other clients and other authorised users. The parties acknowledge and agree that SupplyWell shall have full right and title to such insights and to data derived from the Customer Data (whether alone or in conjunction with data from other clients) for the purposes of providing services to third parties and/or for improving, modifying and developing the Services.

6. Data Protection

- a) In this condition, "Data Protection Laws" means all privacy laws applicable to any Personal Data processed under or in connection with the Agreement, including, without limitation, the General Data Protection Regulation 2016/679 (the "UK GDPR"), the Privacy and Electronic Communications Directive 2002/58/EC (as the same may be superseded by the Regulation on Privacy and Electronic Communications ("ePrivacy Regulation"), and all national legislation implementing or supplementing the foregoing, all as amended, re-enacted and/or replaced and in force from time to time.
- b) To the extent that a party acts as a data processor ("Processor") on behalf of the other party acting as a data controller ("Controller") in respect of any personal data comprised in the Customer Data ("Personal Data") as defined in the Data Protection Laws, the Processor shall ensure that:
 - (i) unless required to do otherwise by applicable Data Protection Laws, it shall (and shall take steps to ensure each person acting under its authority shall) process the Personal Data only on and in accordance with the Controller's documented instructions as set out in the Order Form, as updated from time to time by agreement between the parties;
 - (ii) persons authorised by the Processor to process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
 - (iii) if Data Protection Laws require it to process Personal Data other than in accordance with the Order Form, it shall notify the Controller of any such requirement before processing the Personal Data (unless applicable law prohibits such information on important grounds of public interest);
 - (iv) it informs the Controller of any addition, replacement, or other changes of Sub-processors and provides the Controller with the opportunity to reasonably object to such changes on legitimate grounds. The Controller acknowledges that these Sub-processors are essential to providing the

Services and that objecting to the use of a Sub-processor may prevent the Processor from offering the Services to the Controller. The Processor will enter into a written agreement with the Sub-processor imposing on the Sub-processor obligations comparable to those imposed on the Processor under this Agreement, including appropriate data security measures. In case the Sub-processor fails to fulfil its data protection obligations under such written agreement with the Processor, that Processor will remain liable to the Controller for the performance of the Sub-processor's obligations under such agreement. By way of this Agreement, the Controller provides general written authorisation to the Processor to engage Sub-processors as necessary to perform the Services. "Sub-processor" means another data processor engaged by the Processor for carrying out processing activities in respect of the Personal Data on behalf of the Controller;

(v) taking into account the nature of the processing, it shall assist the Controller by appropriate technical and organisational measures (at the Controller's sole expense), insofar as this is possible, for the fulfilment of the Customer's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III of GDPR;

(vi) it shall implement and maintain reasonable and appropriate technical and organisational measures in relation to the processing of Personal Data by the Processor, taking into account the nature of the processing;

(vii) at the choice of the Controller, it deletes or returns all the Personal Data to the Controller after the end of the provision of Services relating to processing, and deletes existing copies unless Data Protection Laws require storage of the Personal Data;

(viii) it will contribute to audits or inspections by making available to the Controller upon request audit reports which the Controller must treat confidentially. The Processor will respond to a written security questionnaire submitted to it by the Controller provided that the Controller will not exercise this right more than once per year;

(ix) in respect of any Personal Data Breach involving Personal Data, the Processor shall, without undue delay notify the Controller of the Personal Data Breach; and provide the Controller with details of the Personal Data Breach. "Personal Data Breach" means any actual breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, any Personal Data;

(x) all transfers by the Processor of Personal Data to countries outside the United Kingdom and European Economic Area shall (to the extent required under Data Protection Laws) be effected by way of such legally enforceable mechanism(s) for transfers of personal data as may be permitted under Data Protection Laws from time to time which may include the standard contractual conditions or an organisation which holds a valid privacy shield certification.; and

(xi) maintain complete and up-to-date records of processing activities carried out on the Controller's behalf as required by the Data Protection Laws.

- c) To the extent that SupplyWell processes any Personal Data on the Customer's behalf when performing its obligations under this Agreement, the Customer shall:
- (i) ensure that the Customer is entitled to lawfully transfer the relevant Personal Data to SupplyWell so that SupplyWell may lawfully use, process, and transfer the Personal Data in accordance with this Agreement on the Customer's behalf;
 - (ii) ensure that the relevant third parties have been informed of, and have given their permissions or consent to, such use, processing, and transfer as required under Data Protection Laws or other applicable laws;
 - (iii) take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction, or damage;
 - (iv) not instruct or request SupplyWell (including in the Customer's use of the Services) to undertake any processing which is not in accordance with Data Protection Laws; and
 - (v) notwithstanding any other indemnity provided by the Customer in connection with this Agreement, the Customer shall indemnify SupplyWell (and each of their respective officers, employees, and agents) against all losses, costs, expenses or liabilities incurred by SupplyWell as a result of any breach of this condition.
- d) The Customer shall be responsible for maintaining the security of accounts, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer accounts with or without the Customer's knowledge or consent.
- e) The Customer acknowledges that it is responsible for taking backup copies of any data and appropriate precautions to protect the Customer's computer systems against unauthorised access. If the Customer does anything to or in relation to the Services which is a criminal offence under any law, including but not limited to the Computer Misuse Act 1990, the Customer's right to use the Services will be withdrawn immediately. Due to the nature of the internet, the Services are not guaranteed to be delivered free of all viruses and technical defects of any description.

7. Term & Termination

- a) The Agreement shall remain in force until it is terminated in accordance with its terms.
- b) At the end of each subscription term (an academic term or year as applicable), or credit bundle renewal, the Agreement shall automatically renew for successive periods or bundles unless terminated by notice in writing given by one party to the other of at least one calendar month.
- c) Credit bundle renewal will be automatic for the same number and type of credits unless changed by request from the customer. An auto-renewal invoice will be issued when 75% of total Credits have been used. The Credits will be available from the payment date of this renewal invoice.
- d) Credit balances can be obtained from SupplyWell at any time.
- e) All unused credits can be rolled onto the next and following terms, up to a maximum annual carry forward of 50% i.e. no more than 50% of credits may rollover on an annual

basis, so at least 50% of credits must be used within one year of purchase or they will expire. Credits carried over to the following year must be used within 6 months of carry over.

Example:

Total credits purchased	300
Date purchased	1st January 2025
Credits used in Term 1	50
Credits used in Term 2	25
Credits used in Term 3	50
Credits used at 31st December 2025	125
Credits remaining at 31st December 2025	175
Credits carried over to 2026	150 (A maximum of 50% of credits originally purchased can be carried forward to next year. These must be used within 6 months.)
Credits used in Term 1	75
Credits used in Term 2	50
Credits expired as not used	25 as these were not used within 6 months of carry forward.

- f) Either Party (“**Terminating Party**”) may terminate the Agreement with immediate effect by giving written notice of termination to the other Party (“**Other Party**”) on or at any time after:
- (i) the Other Party commits a material breach of the Agreement (including a series of breaches which amounts to a material breach) which is not remediable or, if remediable, is not remedied within 30 days after the Terminating Party has given written notice to the Other Party requiring that breach (or series of breaches) to be remedied, or
 - (ii) any of the following events occur in respect of the Other Party (or any event analogous to any of the following events occur in respect of the Other Party in a jurisdiction other than England and Wales):
 - insolvency or winding-up proceedings are instituted by or against the Other Party;

- a receiver, liquidator or administrator is appointed for the Other Party or the Other Party passes a resolution for the appointment of a liquidator (other than (in any such case) a voluntary winding-up of a solvent company for the purposes of amalgamation or reconstruction);
- an order is made for the appointment of an administrator to manage the affairs, business and property of the Other Party or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the Other Party or notice of intention to appoint an administrator is given by the Other Party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 of the Insolvency Act 1986);
- the Other Party takes steps to enter into a company voluntary arrangement, an arrangement under Part 26 of the Companies Act 2006 or any analogous compromise or arrangement (whether formal or informal) with any of its creditors (other than (in any such case) a voluntary winding-up of a solvent company for the purposes of amalgamation or reconstruction);
- any substantial part of the assets of the Other Party is the object of attachment, sequestration or other type of comparable proceeding; or
- the Other Party is unable or admits in writing its inability to pay its debts as they fall due.

8. Effects of Termination

- a) Any termination of the Agreement howsoever occasioned shall not prejudice or affect any right of action or remedy which shall have accrued up to the date of termination.
- b) At the date of termination of the Agreement:
 - (i) all licences granted by one Party to the other Party pursuant to the Agreement shall immediately terminate;
 - (ii) The Customer shall immediately, without set-off or deduction, pay SupplyWell all fees, charges and other expenses accrued or incurred by SupplyWell in connection with all work in progress delivered and/or ready for delivery (as at the date of termination) to the Customer and for which the Customer has not previously paid;
 - (iii) each Party shall return to the other Party (or destroy and certify as destroyed, if requested by the other Party), all property and Confidential Information belonging to the other Party in its possession, custody or control save to the extent such Confidential Information is:
 - required to be preserved by the Receiving Party for legal, regulatory, or accounting purposes or
 - stored as part of a routine backup or archiving process, or
 - in the case of SupplyWell, SupplyWell may retain information concerning the use by the Customer of any Supply Educator for the purposes of its services to that Supply Educator.
 - (iv) each Party shall in all other respects cease using the other Party's Confidential Information (as defined below).

9. Representations & Warranties of SupplyWell

- a) SupplyWell represents and warrants that:
- (i) there are no agreements or arrangements, that would be breached by SupplyWell upon execution of the Agreement or that would impair or prevent SupplyWell from rendering the Services to the Customer;
 - (ii) SupplyWell has the necessary resources, expertise and experience to perform the Services and shall perform the Services in a professional and workmanlike manner with due care;
 - (iii) it shall use its reasonable endeavours to procure its personnel, whilst on the premises of the Customer, comply with all rules of the Customer notified by the Customer from time to time; and
 - (iv) SupplyWell shall comply with all laws, rules and regulations applicable to its performance under the Agreement.

10. Confidentiality

- a) In connection with the Agreement, either Party may learn of or have access to, certain confidential or proprietary information owned by the other Party or its affiliates, business partners or clients (the “**Disclosing Party**”) (“**Confidential Information**”). Confidential Information includes but is not limited to, any data or information, oral or written, that relates to a Party or any of that Party's business activities, technology and products, developments, software, methods, trade secrets, personal data, marketing, financial or other strategic business plans and clients. Confidential Information also includes the terms of the Agreement. Notwithstanding the foregoing, Confidential Information shall not include information that:
- (i) is publicly available or in the public domain at the time disclosed,
 - (ii) is or becomes publicly available or enters the public domain through no fault of the receiving Party (“**Receiving Party**”),
 - (iii) is rightfully communicated to the Receiving Party by persons not bound by confidentiality obligations with respect thereto,
 - (iv) is already in the Receiving Party's possession free of any confidentiality obligations with respect thereto,
 - (v) is independently developed by the Receiving Party without the use of any Confidential Information,
 - (vi) is approved for release or disclosure by the Disclosing Party in writing without restriction or
 - (vii) is required to be disclosed by applicable law or order of a court of competent jurisdiction or government department, or agency provided that prior to such disclosure, the Receiving Party shall, wherever possible and permitted by applicable law, advise the Disclosing party of the proposed form of the disclosure.
- b) Each Party shall maintain the Confidential Information in strict confidence and shall not disclose to any third party, publish or copy any part of the Confidential Information. A Party shall use the Confidential Information solely for the purpose of performing its obligations under the Agreement. Each Party shall take all necessary

precautions in handling the Confidential Information and limit disclosures on a need-to-know basis, provided that a Party shall ensure that any third party that obtains access to the Confidential Information agrees in writing to comply with the confidentiality provisions of this Condition. Notwithstanding the foregoing, the Receiving Party shall remain liable for the acts of any third party that has received Confidential Information from it or its agents, employees, subcontractors or discloses. However, the Receiving Party may disclose Confidential Information pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that the Receiving Party (to the extent legally permissible) gives reasonable prior notice to the Disclosing Party to contest such order or requirement. Upon the termination or expiration of the Agreement, the Receiving Party shall return to Disclosing Party, or certify the destruction of, all Confidential Information.

11. Indemnities

- a) The Customer shall defend, indemnify and hold harmless SupplyWell, its subcontractors, officers, directors and employees from and against any claims, actions, proceedings against SupplyWell or any other indemnified person and any losses, damages, expenses and costs (including court costs and reasonable legal fees) arising out of or in connection with the same, and in each case arising out of or in connection with (a) the Customer's use of the Services in breach of this Agreement, (b) the Customer's use of any materials, or systems with the Services not provided by or agreed by SupplyWell, or (c) the Customer's or SupplyWell's use of any Customer Data, provided that:
 - (i) this indemnity shall not apply to the extent that any such claims, actions, proceedings, losses, damages, expenses and costs arise as a result of any breach of the Agreement by SupplyWell;
 - (ii) the Customer is given prompt notice of any such claim;
 - (iii) SupplyWell provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
 - (iv) the Customer is given sole authority to defend or settle the claim.
- b) SupplyWell shall defend the Customer, its officers, directors and employees against any claim by a third party that the Services or use by the Customer of the Services infringe any United Kingdom patent effective as of the Effective Date, copyright, trademark, database right or right of confidentiality, provided that:
 - (i) this indemnity shall not apply to the extent that any such claim arises as a result of (a) any breach of the Service Agreement by the Customer or its Authorised Users or (b) the Customer's use of any materials, or systems with the Services not provided by or agreed by SupplyWell;
 - (ii) SupplyWell is given prompt notice of any such claim;
 - (iii) the Customer provides reasonable co-operation to SupplyWell in the defence and settlement of such claim, at SupplyWell's expense; and
 - (iv) SupplyWell is given sole authority to defend or settle the claim.
- c) In defending any claim or in anticipation of any such claim, SupplyWell reserves the right in its absolute discretion:

- (i) procure for the Customer the right to continue to use the Services (or any part thereof) in accordance with the terms of the Agreement;
- (ii) modify the Services so that they cease to be infringing;
- (iii) replace the Services or any relevant part with non-infringing services; or
- (iv) terminate this agreement immediately by notice in writing to the Customer and refund any of the fees paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Services to the date of termination).

12. Limitations of Liability

- a) Nothing in the Agreement excludes or limits either Party's liability in respect of death or personal injury caused by the negligence of a Party or its directors, employees, agents or subcontractors; any fraudulent misrepresentation or other fraud; and any other liability which by law cannot be excluded or limited.
- b) Subject to Condition 9(a), neither Party shall be liable to the other Party for any special, indirect, consequential or incidental losses or punitive or exemplary damages; direct or indirect loss of profits, loss of contracts, loss of business, loss of anticipated revenue or savings, or loss of opportunity; and/or loss of or damage to data, whether arising from negligence, breach of contract or otherwise under or in connection with the Agreement.
- c) Other than in respect of any claims for breach of obligations relating to data security or for infringement of intellectual property, the maximum aggregate liability of SupplyWell whether arising from negligence, breach of contract or otherwise under or in connection with the Agreement shall be limited to the lower of the amount paid by the Customer to SupplyWell in the six months preceding the first claim and £200,000.
- d) For any and all claims for breach of obligations relating to data security or for infringement of intellectual property, the maximum aggregate liability of SupplyWell whether arising from negligence, breach of contract or otherwise under or in connection with the Agreement shall be limited to £500,000.
- e) SupplyWell shall not be liable for any delay or failure to perform its obligations under the Agreement or be liable for any losses suffered or incurred by or claimed or awarded against the Customer under or in connection with the Agreement if and to the extent that such delay, failure or losses are or are caused by any acts or omissions of the Customer or the Customer's employees, agents or contractors or due to a breach of the Agreement by the Customer.

13. Anti-Bribery

- a) Each Party shall
 - (i) comply with all applicable laws and regulations relating to anti-bribery and anti-corruption; and
 - (ii) have and maintain in place throughout the term of the Agreement adequate policies and procedures to ensure that Party, and any person who performs or has performed services for or on behalf of that Party in connection with the Agreement (including all employees, officers, agents, consultants and subcontractors of that Party), comply with those laws and regulations and enforce such policies and procedures where appropriate.

- b) SupplyWell reserves the right to request evidence from the Customer from time to time of compliance with Condition 10(a) above, and in the event that the Customer cannot comply, to SupplyWell's reasonable satisfaction, such failure shall constitute a material breach, for the purposes of Condition 5(b)(i).
- c) Each Party acknowledges and confirms that it has not engaged in any conduct whether itself or through associated persons in entering into the Agreement that might be construed as an offence under any anti-corruption laws.

14. General

- a) Neither the Agreement nor the right to receive any payments hereunder may be assigned, novated or otherwise transferred by either Party, without the prior written consent of the other Party, save that SupplyWell may transfer any agreements to any third party that is the transferee of any part of the SupplyWell business to which the agreement relates. No course of dealing nor any delay in exercising any rights hereunder shall operate as a waiver of any such rights. No waiver of any default or breach shall be deemed a continuing waiver or a waiver of any other breach or default. The remedies under the Agreement shall be cumulative and not alternative and the election of one remedy for a breach shall not preclude pursuit of other remedies unless expressly provided otherwise in the Agreement.
- b) Notwithstanding the provisions of Condition 11(a) above, SupplyWell reserves the right to subcontract all or any of its obligations under the Agreement. In the event that SupplyWell does subcontract, it shall select the subcontractor in good faith and shall remain liable for the performance of its obligations hereunder.
- c) Each of SupplyWell and the Customer acknowledges and agrees that in entering into this agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement, other than as expressly set out in this agreement.
- d) The Agreement shall be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts.
- e) If any part of the Agreement shall be held or declared to be invalid or unenforceable for any reason by any court of competent jurisdiction, such provision shall be ineffective but shall not affect any other part of the Agreement. The provisions of Conditions 4, 8, 9, 10, 11, 13 and this Condition 14 shall survive the expiration or termination of the Agreement, regardless of the reason or reasons therefor.
- f) The Agreement represents the entire agreement between the parties on the subject matter herein and supersedes any prior discussion, negotiations, agreements or understandings, whether oral or written, and any provision in any other document purporting to supplement or vary the provisions hereof shall be void. To the extent permitted by law, SupplyWell excludes all warranties, conditions and terms implied by law. SupplyWell reserves the right to update and amend its terms and conditions from time to time, and such changes shall take effect 10 days after notification to the Customer.
- g) Save for the payment obligations more fully set out in Condition 2, neither Party shall be liable to the other Party for its failure to perform or the delayed performance of its obligations under the Agreement if and to the extent that failure or delay results from an act, event, omission or accident beyond the reasonable control of a Party ("**Force Majeure Event**") provided that the affected Party:

- (i) promptly notify the other Party of the cause of the delay or non-performance and the likely duration of the delay or non-performance; and
 - (ii) uses its reasonable endeavours to limit the effect of that delay or non-performance on the other Party. If a Force Majeure Event continues for more than a continuous period of 30 days, either Party shall have the right to terminate the Agreement on written notice to the other Party, without further liability to the other Party.
- h) The Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute one and the same document. The exchange of a fully executed Agreement (in counterparts or otherwise) by email exchange of PDF (or similar format) copies shall be sufficient to bind the parties to the terms and conditions of the Agreement.
- i) Each Party is an independent company in relation to the other Party with respect to all matters arising under the Agreement and nothing herein shall be deemed to establish a partnership, joint venture, association or employment relationship between the parties.
- j) The Parties do not intend that a person who is not a party to the Agreement shall have any rights under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce any terms of the Agreement.
- k) Nothing in this Agreement shall confer any rights on any person or party (other than the parties to this Agreement) under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- l) This Agreement and any disputes or claims arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the laws of England and Wales, and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

15. Notices

- a) Any notice given under or in connection with the Agreement must be in writing (which, unless otherwise stated in the Agreement, shall include email, but shall exclude fax, SMS and other instantaneous messaging media), given in English and must be either
 - (i) delivered personally,
 - (ii) sent by recorded delivery post or first class post,
 - (iii) sent by prepaid express courier service, service fee prepaid, or
 - (iv) sent by email, to the address of the recipient set out in the Agreement or to such other address as the recipient may designate in writing from time to time in accordance with this Condition 11(i).
- b) “Business Day” means Monday to Friday excluding any statutory, public or bank holiday in England. In the absence of evidence of earlier receipt, any notice shall be deemed to have been received.
 - (i) if delivered personally, at the time of delivery, or
 - (ii) if sent by recorded delivery or first class post at 10.00 am on the Business Day after it was put into the post, or

(iii) if sent by express courier service, at 10.00 am on the second Business Day after dispatch, or

(iv) if sent by email, upon generation of a receipt by the recipient's server, or if no receipt notice is generated, upon delivery to the recipient's server, save that if that is outside business hours, at 10 am on the next Business Day. Neither party may use email as a valid means of serving any notice to terminate the Agreement or to serve on the other party any legal and/or court document including the service, delivery or notification of any without prejudice communications, claim form, notice, order, judgement or other document relating to or in connection with any proceedings, suit or action arising out of or in connection with the Agreement.

16. Interpretation

- a) Words and expressions having a meaning in one part of these Conditions shall bear the same meaning in other parts of these Conditions unless expressly stated otherwise.
- b) Unless the context otherwise requires, references to the singular include the plural and references to the masculine include the feminine and vice versa.
- c) The headings contained in these Conditions are for convenience only and do not affect their interpretation.
- d) Any reference, express or implied, to an enactment includes a reference to that enactment as from time to time amended, modified, extended, reenacted, replaced or applied by or under any other enactment (whether before or after the date of these Conditions) and all subordinate legislation made (before or after these Conditions) under it from time to time.

PART B: Terms and Conditions for the supply of the SupplyWell Platform and SAAS Services

1. This document

This Part B comprises the terms and conditions relating to the supply of access to the SupplyWell Platform by SupplyWell to the Customer. It is to be read in conjunction with Part A of this document.

2. Definitions & interpretation

In this document, the following definitions apply:

“Authorised User” - means a representative of the Customer who is authorised by the Customer to access the SupplyWell Platform. There are no restrictions on the number of Authorised Users, apart from that imposed by the Customer;

“Credits” - Supply Credits are the number of instances educators will be available to be used by the Customer. Credits are available in two types - Teacher Credits or Teaching Assistant/Cover Supervisor Credits.

“Customer's Group” - means (a) any individual, company, partnership, statutory body or other entity which from time to time Controls the Customer, including (but not limited to) as a holding company as defined in section 1159 of the Companies Act 2006; and (b) any company, partnership, statutory body or other entity which from time to time is Controlled by or is under common Control with the Customer, including (but not limited to) as a subsidiary or holding company as defined in section 1159 of the Companies Act 2006;

“Customer Data” - means all data, information, know-how, material or input uploaded to any Software or transmitted through the Services by or for the Customer and/or any Authorised User;

“Data Protection Laws” - means the Data Protection Act 2018, the General Data Protection Regulation (EU 2016/679) and any applicable statutory or regulatory provisions in force from time to time relating to the protection and transfer of personal data;

“SAAS Services” means the Hosted, Implementation and Support services as defined in condition 3;

“SupplyWell Content” - means all data, information and material owned by or licensed to SupplyWell and comprised within the Services, but excluding Customer Data;

“Subscription model” means pre paid credit bundles at a discounted rate as compared to the full standard PAYG rate.

“The SupplyWell Platform” is the product supplied by SupplyWell Ltd to the Customer, for the purpose of sourcing absence cover which is delivered under a Software as a Service (SaaS) subscription model.

3. SAAS services

- a) Subject to the Conditions, SupplyWell will deliver to the Customer for the Term, solely for the Customer's internal operation, access to the SupplyWell Platform and associated SAAS Services which comprise:
- (i) the non-exclusive, non-transferable right to access and use the SupplyWell Platform on such systems and using such equipment as may be stipulated by SupplyWell from time to time (the "Hosted Services");
 - (ii) such Services reasonably necessary (in the opinion of SupplyWell) to allow the Customer access to the Hosted Services ("Implementation Services"). Such implementation services may include configuration, modification and testing up to 6 hours which are included in the subscription fee. Additional hours may be charged by SupplyWell at their standard hourly rate for such services; and
 - (iii) the technical support services which will provide technical support in relation to the identification of, and resolution of, errors or bugs in the Hosted Services for supported web browsers and shall not include the provision of training services unless stated otherwise in the Order Form ("Support Services"). These services will be available within usual UK business hours (9 am to 5 pm) with a paid-for technical support 'ticket' option available outside of business hours.
- b) Additional Services - Any services requested by the Customer that fall outside the scope of the core SAAS Services shall be quoted separately by SupplyWell in advance of the delivery of such services and subject to the written agreement of the parties.
- c) For the avoidance of doubt, SupplyWell shall not be under any obligation to deliver any Services unless and until agreed in writing with the Customer.
- d) The Parties acknowledge and agree that due to the nature of the SAAS Services, as with many SAAS services, the SAAS Services are under a state of continual development, and as a result, SupplyWell may adapt, improve, modify, adjust or alter the SAAS Services from time to time. This may take the form of changing the look and feel of the interface, adding or removing some functions, or changing the way the functions or SAAS Services may perform. SupplyWell will use reasonable endeavours to ensure that the core functionality of the SAAS Services will remain in some form, albeit it will not guarantee that it will be presented, or operate in the way it does at the start of this agreement.
- e) Furthermore, the parties acknowledge and agree that the SAAS Services and the SupplyWell Platform may incorporate some elements that are based on, derive from, or utilise artificial intelligence, machine learning, or self-updating mechanisms (collectively "AI"). Due to the nature of AI, the SAAS Services will over time modify and adapt as a result of feedback and use. Such modification and adaptation will not in any way be a breach of this Agreement by SupplyWell.

4. Customer Obligations

- a) The Customer agrees that they will not, directly or indirectly (and will ensure that any Authorised User will not):
- (i) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the SAAS Services, or any software developed, trained

or owned by or licensed to SupplyWell and which forms part of, or is used in the provision the SAAS Services, documentation or data related to the Services ("Software");

(ii) modify, translate, teach, train or create derivative works based on the Services or any Software (except to the extent expressly permitted by SupplyWell or authorised within the Services);

(iii) access all or any part of the Services or the Software in order to build a product or service which competes with the Services;

(iv) use the Services to provide services to third parties;

(v) licence, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party except the employees or agents of the Customer;

(vi) use the Services in a manner that is illegal or causes damage or injury to any person or property;

(vii) access, store, distribute or use during the course of its use of the Services any malware or any material that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; promotes unlawful violence; is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability;

(vii) or attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this condition.

- b) The Customer shall use all reasonable endeavours to prevent any unauthorised access to or use of, the Services and, in the event of any such unauthorised access or use, promptly notify SupplyWell.
- c) The Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including modems, hardware, servers, software, operating systems, networking, web servers and the like.
- d) SupplyWell reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this condition.

5. SupplyWell responsibilities

In view of the nature of SAAS Services, and the fact that they will be dependent upon the proper functioning of the internet, and other factors outside the reasonable control of SupplyWell, notwithstanding the obligations of SupplyWell in Condition 3 of Part A, SupplyWell:

(i) does not warrant that the Customer's use of the Services will be uninterrupted or error-free;

(ii) does not warrant that the Services will be free from vulnerabilities or viruses (although SupplyWell will use reasonable commercial endeavours, including commercially available software and systems to prevent them);

(iii) 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 may be subject to limitations, delays and other problems inherent in the use of such communications facilities;

(iv) shall use reasonable endeavours to maintain the availability of the Hosted Services to the Customer, but does not guarantee 100% availability;

(v) does not control the content posted to or via the Services and, in particular, does not control the Customer Data and, as such, SupplyWell does not make or give any representation or warranty as to the accuracy, completeness, currency, correctness, reliability, integrity, usefulness, quality, fitness for purpose or originality of any of the foregoing content or data; and

(vi) reserves the right to update or maintain the Hosted Services at any time.

6. Third-Party Service Providers

- a) The Customer acknowledges that the Services may enable or assist it to access the services or content of or correspond with third-party services (including Slack, Google, Hubspot, Monday.com, Employment Hero, Circle and any payment processor such as Stripe to which the Services may facilitate access) and that it does so solely at its own risk.
- b) SupplyWell makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or interactions with, any such third-party service.
- c) SupplyWell recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website in connection with the Services.
- d) SupplyWell does not endorse or approve any third-party service nor the content of any of the third-party services made available via the Services.

Part C: Terms and Conditions for the supply of Supply Educators

1. Introduction & Summary

- a) The Customer will be treated as having accepted these conditions set out in this Part C if it requests, interviews with or engages any Supply Educator.
- b) The Customer undertakes to provide the relevant information to enable SupplyWell to comply with its obligations under the Conduct Regulations and the Agency Workers Regulations 2010 (AWR).
- c) The Customer agrees to pay the Educator Wage Charges, which are calculated according to the number of days worked by the Supply Educator, their daily rate of pay, any paid holiday leave to which they are entitled, employer's National Insurance contributions, employer's pension contributions and apprenticeship levy and any other relevant expenses as may have been agreed with the Customer.
- d) SupplyWell's PAYG standard rate service fee or subscription fee, as set out in any Order Form or Booking confirmation will be charged and invoiced separately.
- e) SupplyWell will invoice the Educator Wage Charges to the Customer on a weekly basis.
- f) The Customer will pay the Educator Wage Charges within 7 days of the date of the invoice in line with the Company Credit Control Policy.
- g) SupplyWell will invoice any associated PAYG standard rate service fee to the Customer on a weekly basis along with the Educator Wage Charges.
- h) SupplyWell will invoice any subscription fees, as set out in any Order Form in advance and separately to the Educator Wage Charges.
- i) The Customer will comply with its obligations under Regulations 12 & 13 of the AWR and all statutory provisions, by-laws, codes of practice and legal requirements to which it is ordinarily subject in respect of its own staff.
- j) The Customer shall advise SupplyWell of any special health and safety matters or any requirements imposed by law or by any professional body, which must be satisfied if the Supply Educator is to fill the Assignment.
- k) The Customer shall provide SupplyWell with a copy of their Health & Safety Policy and their school staff risk assessment and information about any Health and Safety considerations that may impact the educator. The Health & Safety policy, any risk assessments and Health & Safety information must be provided to SupplyWell before the first assignment at the setting, annually and, in addition, if there are any changes. These must be emailed to hello@supplywell.co.uk.
- l) The Customer shall verify the days worked by the Supply Educator each week by way of the SupplyWell Platform.
- m) If the Customer considers that the services of the Supply Educator are unsatisfactory, they may terminate the Assignment immediately.
- n) The Customer, SupplyWell or the Supply Educator may terminate an Assignment at any time without prior notice subject to cancellation policy.
- o) The Customer shall be liable to pay a Transfer Fee if (a) they engage a Supply Educator Introduced by SupplyWell, or (b) if the Customer introduces a Supply Educator Introduced to them by SupplyWell to a third party who then engages the Supply Educator directly.
- p) SupplyWell will waive the Transfer Fee on the basis that the Customer engages the Supply Educator for a Period of Extended Hire; and

- q) All information relating to a Supply Educator is confidential and subject to Data Protection Laws and is provided solely for the purpose of providing work-finding services to the Customer.

2. This Document and the Employment Supply Services

- a) Part C of this document comprises the terms and conditions relating to the supply of Employment Supply Services by SupplyWell to the Customer. It is to be read in conjunction with Part A of this document, which relates to the provision of Services generally by SupplyWell to the Customer.
- b) SupplyWell shall act as an employment business (as defined in Section 13(3) of the Employment Agencies Act 1973 (as amended) when introducing Supply Educators for Assignments with the Customer.
- c) The Employment Business carries on the business of sourcing and supplying temporary workers to provide services to its customers. Those temporary workers may be engaged directly by the Employment Business or through Intermediaries. The Customer has instructed the Employment Business to supply temporary workers to provide services, as specified in the relevant Assignment Booking Confirmation.
- d) The Employment Business will introduce Temporary Resources to the Customer to provide the Assignment Services to the Customer under the terms of this Agreement.

3. Definitions & interpretation

In Part C of these Conditions, the following definitions apply:

“Assignment” means the services to be performed by the Supply Educator for the Customer for a period of time during which the Supply Educator is supplied by SupplyWell to work temporarily for and under the supervision and direction of the Customer;

“Assignment Booking Confirmation Email” means written confirmation of the assignment details agreed with the Customer prior to the commencement of the Assignment;

“Apprenticeship Levy” means the apprenticeship levy due in accordance with the Finance Act 2017 and the Income Tax (Pay as you Earn) (Amendment) Regulations 2017;

“AWR” means the Agency Workers Regulations 2010;

“AWR Claim” means any complaint or claim to a tribunal or court made by or on behalf of the Supply Educator against the Customer and/or SupplyWell for any breach of the AWR;

“Calendar Week” means any period of seven days starting with the same day as the first day of the First Assignment;

“Charges” means the charges as notified to the Client before an Assignment starts and which may be varied by the Employment Business from time to time during the Assignment;

“Comparable Employee” means as defined in [Schedule 1](#) to these Conditions;

“Commencement Date” means the date of the first day of the First Assignment and for the avoidance of doubt all the provisions of these Conditions shall be deemed to become effective at this date;

“Conduct Regulations” means the Conduct of Employment Agencies and Employment Businesses Regulations;

“Confidential Information” means any and all confidential commercial, financial, marketing, technical or other information or data of whatever nature relating to the Customer or Employment Business or their business or affairs (including but not limited to these Conditions, data, records, reports, agreements, software, programs, specifications, know-how, trade secrets and other information concerning the Assignment) in any form or medium whether disclosed or granted access to whether in writing, orally or by any other means, provided to the Supply Educator or any third party in relation to the Assignment by the Customer or SupplyWell or by a third party on behalf of the Customer whether before or after the date of these Conditions together with any reproductions of such information in any form or medium or any part(s) of such information;

“Conditions” means these terms of business (including the attached schedules) together with any applicable Assignment Details Email;

“Conditions of Liability” means meets the requirements of section 50(1)(b) ITEPA and one of the conditions of liability set out in Sections 51 to 53 and 61N, 61O and 61P ITEPA;

“Control” means (a) the legal or beneficial ownership, directly or indirectly, of more than 50% of the issued share capital or similar right of ownership; or (b) the power to direct or cause the direction of the affairs and/or general management of the company, partnership, statutory body or other entity in question, whether through the ownership of voting capital, by contract or otherwise, and "Controls" and "Controlled" shall be construed accordingly;

“Customer’s Group” means (a) any individual, company, partnership, statutory body or other entity which from time to time Controls the Client, including (but not limited to) as a holding company as defined in section 1159 of the Companies Act 2006; and (b) any company, partnership, statutory body or other entity which from time to time is Controlled by or is under common Control with the Client, including (but not limited to) as a subsidiary or holding company as defined in section 1159 of the Companies Act 2006;

“Data Protection Laws” means the Data Protection Act 2018, the General Data Protection Regulation (EU 2016/679) and any applicable statutory or regulatory provisions in force from time to time relating to the protection and transfer of personal data;

“Educator Wage Charges” means SupplyWell’s charges calculated in accordance with condition 8 below and as may be varied from time to time in accordance with Part C of these Conditions;

“Engagement” means the engagement (including the Supply Educator’s acceptance of the Customer’s offer), employment or use of the Supply Educator by the Customer or by any third party to whom the Supply Educator has been Introduced by the Customer, on a permanent or temporary basis, whether under a contract of service or for services; under an agency, licence, franchise or partnership agreement; or any

other engagement; or through a limited company of which the Supply Educator is an officer, employee or other representative; and “Engage”, “Engages” and “Engaged” shall be construed accordingly;

“Exempt Organisation” means an organisation which is exempt from the Off-Payroll Rules;

“First Assignment” means: i) the relevant Assignment; or ii) if, prior to the relevant Assignment the Supply Educator has worked in any assignment in the same role with the relevant Customer as the role in which the Supply Educator works in the relevant Assignment; and the relevant Qualifying Period commenced in any such assignment, that assignment (an assignment being (for the purpose of this defined term) a period of time during which the Supply Educator is supplied by one or more Temporary Work Agencies to the relevant Customer to work temporarily for and under the supervision and direction of the relevant Customer);

“Inside IR35” means an Assignment which the Client has determined meets the conditions of Section 61M ITEPA;

“Intermediary” means any entity (other than the Employment Business) through which a Temporary Resource provides their services including (and, except where otherwise indicated, includes Intermediary Staff and any third party to whom the provision of the Assignment Services is assigned or sub-contracted in accordance with section 4);

“Intermediary Fees” means the fees payable to an Intermediary for the provision of the Assignment Services;

“Intermediary Staff” means any officer, employee, worker or representative of an Intermediary supplied to provide the Assignment Services (and, except where otherwise indicated, includes any officer, employee, worker or representative of any third party to whom the provision of the Assignment Services is assigned or sub-contracted in accordance with section 4);

“Introduction” means (i) the passing to the Customer of a curriculum vitae or information which identifies the Supply Educator; or (ii) the Customer’s interview of the Supply Educator (in person or by telephone or by any other means), following the Customer’s instruction to SupplyWell to supply a temporary worker; or (iii) the supply of the Supply Educator; and, in any case, which leads to an Engagement of the temporary worker or the Supply Educator; and “Introduced” and “Introducing” shall be construed accordingly;

“Invoice Financing” means the use of a specialist business finance solutions company to manage accounts receivable invoices on behalf of SupplyWell. SupplyWell may work in partnership with such a finance solutions company. If this is the case, the Customer may receive correspondence from the specialist business finance solutions company, by way of a welcome letter, introducing their processes and occasionally, may receive contact by telephone, email or letter to seek confirmation that work invoiced for has been carried out, as part of their record-keeping protocols.

“ITEPA” means the Income Tax (Earnings and Pensions) Act 2003;

“Losses” means all losses, liabilities, damages, costs, expenses, fines, penalties or interest, whether direct, indirect, special or consequential (including, without limitation, any economic loss or other loss of profits, business or goodwill,

management time and reasonable legal fees) and charges, including such items arising out of or resulting from actions, proceedings, claims and demands;

“NICs Legislation” means the Social Security (Categorisation of Earners) Regulations 1978;

“Off-Payroll Rules” means Part 2, Chapter 10 ITEPA;

“Outside IR35” means an Assignment which the Client has determined does not meet the conditions of Section 61M ITEPA;

“Period of Extended Hire” means any additional period that the Customer wishes the Supply Educator to be supplied for beyond the duration of the original Assignment or series of Assignments as an alternative to paying a Transfer Fee;

“PSC” means an Intermediary in which the Temporary Resource meets the Conditions of Liability, and where relevant includes the Intermediary Staff providing their services through the PSC and any substitute, or assignees or sub-contractors to whom the PSC has assigned or sub-contracted the delivery of the Assignment Services;

“Qualifying Period” means 12 continuous Calendar Weeks during the whole or part of which the Supply Educator is supplied by one or more Temporary Work Agencies to the relevant Customer to work temporarily for and under the supervision and direction of the relevant Customer in the same role, and as further defined in [Schedule 1](#) to these Conditions;

“Relevant Period” means whichever ends the later of (a) the period of 8 weeks commencing on the day after the last day on which the Supply Educator worked for the Customer having been supplied by SupplyWell; or (b) the period of 14 weeks commencing on the first day on which the Supply Educator worked for the Customer having been supplied by SupplyWell or 14 weeks from the first day of the most recent Assignment where there has been a break of more than 6 weeks (42 days) since any previous assignment;

“Relevant Terms and Conditions” means terms and conditions relating to:

- (a) pay;
- (b) the duration of working time;
- (c) night work;
- (d) rest periods;
- (e) rest breaks; and
- (f) annual leave

that are ordinarily included in the contracts of employees or workers (as appropriate) of the Customer whether by collective agreement or otherwise and including (for the avoidance of doubt and without limitation) such terms and conditions that have become contractual by virtue of custom and practice, including copies of all relevant documentation;

“Remuneration” includes gross base salary or fees, guaranteed and/or anticipated bonus and commission earnings, allowances, inducement payments, the benefit of a company car and all other payments and taxable (and, where applicable, non-taxable) emoluments payable to or receivable by the Supply Educator for services provided to or on behalf of the Customer or any third party;

“Safeguarding Legislation” means the Safeguarding Vulnerable Groups Act 2006;

“Supply Educator” means (for the purposes of AWR) a Temporary Resource who meets the definition of Agency Worker as set out in Regulation 3 of the AWR and the individual who is Introduced by SupplyWell to provide services to the Customer;

“Status Determination Statement” means a written statement which meets the requirements of Section 61NA ITEPA and in which the Client confirms its decision, and the reasons for its decision, on the application of the Off-Payroll Rules to an Assignment;

“Temporary Resource” means any temporary worker Introduced or supplied by the Employment Business to provide the Assignment Services to a Customer, including an Agency Worker and unless otherwise expressly stated, any officer, employee, worker or representative of an Intermediary;

“Temporary Work Agency” means as defined in [Schedule 1](#) to these Conditions;

“Transfer Fee” means the fee payable in accordance with condition 9 of these Conditions and Regulation 10 of the Conduct Regulations;

“Vulnerable Person” means any person who by reason of age, infirmity, illness, disability or any other circumstance is in need of care or attention, and includes any person under the age of eighteen; and

“WTR” means the Working Time Regulations 1998.

4. IR35 Compliance and Off-Payroll Rules

Where the Customer engages a Supply Educator who provides services through a personal service company (PSC), the Customer acknowledges that it has certain obligations under the off-payroll working rules (IR35).

The Customer shall:

- (i) Provide a written Status Determination Statement (SDS) to both SupplyWell and the PSC prior to the commencement of the Assignment, stating whether the Assignment is “Inside IR35” or “Outside IR35” and including the reasons for that decision;
- (ii) Respond to any queries raised by SupplyWell or the PSC regarding the SDS within 7 calendar days;
- (iii) Review the SDS at least every 6 months and issue an updated SDS if the circumstances of the Assignment change;
- (iv) Accept responsibility for any unpaid tax or liabilities if the Assignment is later deemed “Inside IR35” and an incorrect SDS was issued;
- (v) Warrant that neither the Customer nor its agents will exercise supervision, direction, or control over a PSC or its personnel where the Assignment is stated to be Outside IR35.

Failure to comply with the above requirements may result in immediate termination of the Assignment by SupplyWell.

5. Customer Obligations

- a) To enable SupplyWell to comply with its obligations under the Conduct Regulations the Customer undertakes to provide SupplyWell details of the position that the Customer seeks to fill, including the following:
 - (i) the type of work that the Supply Educator would be required to do;
 - (ii) the location and hours of work;
 - (iii) the experience, training, qualifications and any authorisation which the Customer considers necessary or which are required by law or any professional body for the Supply Educator to possess in order to work in the position;
 - (iv) any risks to health or safety known to the Customer and what steps the Customer has taken to prevent or control such risks;
 - (v) the date the Customer requires the Supply Educator to commence the Assignment; and
 - (vi) the duration or likely duration of the Assignment.
- b) The Customer will assist SupplyWell in complying with SupplyWell's duties under the WTR by supplying any relevant information about the Assignment requested by SupplyWell and the Customer will not do anything to cause SupplyWell to be in breach of its obligations under these Regulations. If the Customer requires the services of a Supply Educator for more than 48 hours in any week during the course of an Assignment, the Customer must notify SupplyWell of this requirement before the commencement of the Assignment or at the very latest, where this is not reasonably practicable, before the commencement of the week in which the Customer requires the Supply Educator to work in excess of 48 hours.
- c) The Customer will comply with its obligations under Regulation 12 (Rights of Agency Workers in relation to access to collective facilities and amenities) and 13 (Rights of Agency Workers in relation to access to employment) of the AWR.
- d) To enable SupplyWell to comply with its obligations under the AWR, the Customer undertakes as soon as possible prior to the commencement of each Assignment and during each Assignment (as appropriate) and at any time at SupplyWell's request:
 - (i) to inform SupplyWell of any Calendar Weeks in which the Supply Educator has worked in the same or a similar role with the Customer via any third party prior to the date of commencement of the relevant Assignment and/or during the relevant Assignment which count or may count towards the Qualifying Period;
 - (ii) if, the Supply Educator has worked in the same or a similar role with the Customer via any third party prior to the date of commencement of the relevant Assignment and/or works in the same or a similar role with the Customer via any third party during the relevant Assignment, to provide SupplyWell with all the details of such work which may count towards the Qualifying Period, including (without limitation) details of where, when and the period(s) during which such work was undertaken and any other details requested by SupplyWell;
 - (iii) to inform SupplyWell if, the Supply Educator has prior to the date of commencement of the relevant Assignment and/or during the relevant Assignment carried out work which could be deemed to count toward the

Qualifying Period for the relevant Assignment in accordance with Regulation 9 of the AWR because s/he has:

- completed two or more assignments with the Customer;
- completed at least one assignment with the Customer and one or more earlier assignments with any member of the Customer's Group;
- and/or worked in more than two roles during an assignment with the Customer and on at least two occasions worked in a role that was not the same role as the previous role;

(iv) save where the Supply Educator will not complete the Qualifying Period during the term of the Assignment, to:

- provide SupplyWell with written details of the basic working and employment conditions the Supply Educator would be entitled to for doing the same job if the Supply Educator had been recruited directly by the Customer as an employee or worker at the time the Qualifying Period commenced or with those of a Comparable Employee, such basic working and employment conditions being the Relevant Terms and Conditions;
- inform SupplyWell in writing whether the Relevant Terms and Conditions provided are those of a hypothetical directly recruited employee or worker or those of a Comparable Employee;
- if the Relevant Terms and Conditions provided are those of a Comparable Employee, provide SupplyWell with a written explanation of the basis on which the Customer considers that the relevant individual is a Comparable Employee;
- and inform SupplyWell in writing of any variations in the Relevant Terms and Conditions made at any time during the relevant Assignment after the Qualifying Period commenced;
- and save where the Supply Educator will not complete the Qualifying Period during the term of the Assignment, to provide SupplyWell with written details of its pay and benefits structures and appraisal processes and any variations of the same.

e) In addition, for the purpose of awarding any bonus to which the Supply Educator may be entitled under the AWR, the Customer will:

- (i) integrate the Supply Educator into its relevant performance appraisal system;
- (ii) assess the Supply Educator's performance;
- (iii) provide SupplyWell with copies of all documentation relating to any appraisal of the Supply Educator, including without limitation written details of the outcome of any appraisal and the amount of any bonus awarded; and
- (iv) provide SupplyWell with all other assistance SupplyWell may request in connection with the assessment of the Supply Educator's performance for the purpose of awarding any bonus.

f) The Customer will comply with all SupplyWell's requests for information and any other requirements to enable SupplyWell to comply with the AWR.

- g) The Customer warrants that all information and documentation supplied to SupplyWell in accordance with conditions 4 (d), 4 (e) and 4 (f) is complete, accurate and up-to-date; and it will, during the term of the relevant Assignment, immediately inform SupplyWell in writing of any subsequent change in any information or documentation provided in accordance with conditions 4 (d), 4 (e) and 4 (f).
- h) Without prejudice to conditions 13 (g) and 13 (h), the Customer shall inform SupplyWell in writing of any:
 - (i) oral or written complaint the Supply Educator makes to the Customer which is or may be a complaint connected with rights under the AWR; and
 - (ii) written request for information relating to the Relevant Terms and Conditions that the Customer receives from the Supply Educator as soon as possible but no later than 7 calendar days from the day on which any such oral complaint is made to or written complaint or request is received by the Customer and the Customer will take such action and give such information and assistance as SupplyWell may request, and
 - (iii) within any timeframe requested by SupplyWell, in order to resolve any such complaint or to provide any such information in a written statement to the Supply Educator within 28 days of the Customer's receipt of such a request in accordance with Regulation 16 of the AWR and the Customer will provide SupplyWell with a copy of any such written statement.
- i) The Customer undertakes that it knows of no reason why it would be detrimental to the interests of the Supply Educator for the Supply Educator to fill the Assignment.

6. Information to be provided by SupplyWell to the Customer

- a) When Introducing a Supply Educator to the Customer SupplyWell shall inform the Customer:
 - (i) of the identity of the Supply Educator;
 - (ii) that the Supply Educator has the necessary or required experience, training, qualifications and any authorisation required by law or a professional body to work on the Assignment;
 - (iii) that the Supply Educator is willing to work on the Assignment; and
 - (iv) of the Charges.
- b) Where such information is not given in paper form or by electronic means it shall be confirmed by such means by the end of the third business day (excluding Saturday, Sunday and any Public or Bank Holiday) following, save where the Supply Educator is Introduced for an Assignment in the same position as one in which the Supply Educator had previously been supplied within the previous 5 business days and such information has already been given to the Customer, unless the Customer requests that the information be resubmitted.

7. Timesheets

- a) At the end of each week of an Assignment (or at the end of the Assignment where it is for a period of 1 week or less) the Customer shall verify the days worked by the Supply

Educator during that week by way of approving timesheets in the SupplyWell Platform.

- b) This verification by the Customer is confirmation of the number of days worked. If the Customer is unable to verify the days worked by the Supply Educator because the Customer disputes the days claimed, the Customer shall inform SupplyWell as soon as is reasonably practicable and shall cooperate fully and in a timely fashion with SupplyWell to enable SupplyWell to establish what days, if any, were worked by the Supply Educator. **Failure to verify the days worked does not absolve the Customer of its obligation to pay the Charges in respect of the hours worked.**
- c) The Customer shall not be entitled to decline to verify days worked on the basis that it is dissatisfied with the work performed by the Supply Educator. In the event that the Customer is dissatisfied with the Supply Educator the provisions of condition 10 below shall apply.
- d) If timesheets are not approved by the customer by the deadline of Monday at 12pm, they will be deemed accurate and the customer will be invoiced accordingly. The customer will not then be able to query or contest the associated invoice.

8. Charges

- a) The Customer agrees to pay the Educator Wage Charges as notified to and agreed with the Customer. The Charges are calculated according to the number of days worked by the Supply Educator and comprise the following:
 - (i) the Supply Educator's daily rate of pay;
 - (ii) an amount equal to any paid holiday leave to which the Supply Educator is entitled in connection with the WTR and, where applicable, the AWR and which is accrued during the course of an Assignment;
 - (iii) any other amounts to which the Supply Educator is entitled under the AWR, where applicable;
 - (iv) employer's National Insurance contributions; employer's pension contributions and apprenticeship levy; and
 - (iv) any travel, hotel or other expenses as may have been agreed with the Customer or, if there is no such agreement, such expenses as are reasonable.
- b) SupplyWell reserves the right to vary the Charges agreed with the Customer, by giving written notice to the Customer:
 - (i) in order to comply with any additional liability imposed by statute or other legal requirement or entitlement, including but not limited to the AWR, the WTR and the Pensions Act 2008; and/or
 - (ii) if there is any variation in the Relevant Terms and Conditions.
- c) SupplyWell will invoice the Educator Wage Charges to the Customer on a weekly basis. The Customer will pay the Charges within 7 days of the date of the invoice in line with the Company Credit Control Policy.
- d) In addition to the Educator Wage Charges, the Customer will pay SupplyWell an amount equal to any bonus that the Customer awards to the Supply Educator in accordance with condition 4(e) immediately following any such award and SupplyWell will pay any such bonus to the Supply Educator. For the avoidance of doubt, the

Customer will also pay any employer's National Insurance Contributions and, if applicable, SupplyWell's fee on the bonus in addition to any bonus payable to the Supply Educator.

- e) VAT is payable at the applicable rate on the entirety of the Educator Wage Charges and all sums payable under condition 7.
- f) If the Customer fails to make any payment within 35 days of the invoice date, SupplyWell reserves the right to put in place its late payment procedure, in line with the Company Credit Control Policy, and charge interest on the outstanding amount from the due date until payment is made in full at the "statutory interest" rate of 8% per annum above the Bank of England base rate under the Late Payment of Commercial Debts (Interest) Act 1998.
- g) SupplyWell will not refund any of the Educator Wage Charges.
- h) The Customer's obligations under this condition 7 shall be performed without any right of the Customer to invoke set-off, deductions, withholdings or other similar rights.
- i) If it is the case that SupplyWell utilises a business finance solutions company to manage accounts receivable invoices on its behalf, the bank account details provided on invoices may relate to an account at the finance solutions company. **The Customer must ensure that payments are made to the account detailed on the invoice** and the finance solutions company will process the payments received by the Customer. Remittances should be sent to finance@supplywell.co.uk. All invoices are generated by SupplyWell and any queries relating to invoices should be directed to finance@supplywell.co.uk.
- j) SupplyWell's standard PAYG or subscription fee is charged separately. The standard PAYG fee is included on weekly invoices and the subscription fee is agreed with the Customer in advance and detailed on the Order Form.

9. Payment of the Supply Educator

SupplyWell is responsible for paying the Supply Educator and where appropriate, for the deduction and payment of National Insurance Contributions and PAYE Income Tax applicable to the Supply Educator pursuant to sections 44-47 of the Income Tax (Earnings and Pensions) Act 2003.

10. Transfer Fees

- a) The Customer shall be liable to pay a Transfer Fee if the Customer Engages a Supply Educator Introduced by SupplyWell other than via SupplyWell or introduces the Supply Educator to a third party and such introduction results in an Engagement of the Supply Educator by the third party other than via SupplyWell and: where the Supply Educator has been supplied by SupplyWell, such Engagement takes place during the Assignment or within the Relevant Period; or where the Supply Educator has not been supplied, such Engagement takes place within 6 months from the date of the Introduction to the Customer.
- b) The Transfer Fee will be calculated in accordance with [Schedule 2](#).
- c) However, SupplyWell, not wishing to act as an impediment to the appointment of the Supply Educator in a permanent or fixed-term role, will waive the Transfer Fee on the basis that the Customer engages the Supply Educator for a Period of Extended Hire.

- d) If the Customer wishes to Engage the Supply Educator other than via SupplyWell without liability to pay a Transfer Fee, the Customer may, on giving one week's written notice to SupplyWell, engage the Supply Educator for the Period of Extended Hire specified in [Schedule 2](#).
- e) During such Period of Extended Hire SupplyWell shall supply the Supply Educator on the same terms on which s/he has or would have been supplied during the Assignment and in any case on terms no less favourable than those terms which applied immediately before SupplyWell received the notice in condition 8.2; and the Customer shall continue to pay the Educator Wage Charges set out in condition 6.
- f) If SupplyWell is unable to supply the Supply Educator for any reason outside its control for the whole or any part of the Period of Extended Hire, or the Customer does not wish to hire the Supply Educator on the same terms as the Assignment; but the Supply Educator is Engaged by the Customer, the Customer shall pay the Transfer Fee, reduced pro-rata to reflect any Charges paid by the Customer during any part of the Period of Extended Hire worked by the Supply Educator before being Engaged by the Customer. If the Customer fails to give notice of its intention to Engage the Supply Educator other than via SupplyWell before such Engagement commences, the parties agree that the Transfer Fee shall be due in full.
- g) Where prior to the commencement of the Customer's Engagement other than via SupplyWell, SupplyWell and the Customer agree that such Engagement will be on the basis of a fixed term of less than 12 months, SupplyWell may, in its absolute discretion, reduce the Transfer Fee as calculated in accordance with [Schedule 2](#) pro-rata. Such reduction is subject to the Customer Engaging the Supply Educator for the agreed fixed term. Should the Customer extend the Supply Educator's Engagement or re-Engage the Supply Educator within 12 months from the commencement of the initial Engagement SupplyWell reserves the right to recover the balance of the Transfer Fee.
- h) SupplyWell will not refund the Transfer Fee in the event that the Engagement of the Supply Educator other than via SupplyWell by the Customer or by a third party to which the Customer introduces the Supply Educator terminates or terminates before the end of the fixed term referred to in condition 8.4.
- i) VAT is payable in addition to any Transfer Fee due.

10. Suitability Checks and Information to be Provided in Special Situations

- a) Where the Supply Educator is required by law, or any professional body, to have any qualifications or authorisations to work on the Assignment, SupplyWell will take all reasonably practicable steps to obtain, and provide to the Customer, if required, copies of any relevant qualifications or authorisations of the Supply Educator.
- b) The Customer must request copies of qualifications or authorisations, if they are required, these will not be routinely provided unless requested.
- c) In addition, where the Assignment involves working with, caring for or attending to one or more Vulnerable Persons, SupplyWell will take all reasonably practicable steps to obtain, and provide to the Customer if required, copies of two references from persons who are not relatives of the Supply Educator and who have agreed that the references they provide may be disclosed to the Customer; and such other reasonably practicable steps as are required to confirm that the Supply Educator is suitable for the Assignment. If SupplyWell has taken all reasonably practicable steps to obtain the

information above and has been unable to do so fully it shall inform the Customer of the steps it has taken to obtain this information in any event.

- d) The Customer shall advise SupplyWell at the time of instructing SupplyWell to supply a Supply Educator whether, during the course of the Assignment, the Supply Educator will be required to work with, care for or attend to one or more Vulnerable Persons or engage in regulated activity as defined in the Safeguarding Legislation.
- e) The Customer shall assist SupplyWell by providing any information required to allow SupplyWell to comply with its statutory obligations under the Safeguarding Legislation and to allow SupplyWell to select a suitable Supply Educator for the Assignment.
- f) In particular in the event that the Customer removes a Supply Educator from an Assignment in circumstances which would require SupplyWell to provide information to the Disclosure and Barring Service (or the equivalent authority) under the Safeguarding Legislation, the Customer will provide sufficient information to SupplyWell to allow it to discharge its statutory obligations.
- g) In such cases, the Customer shall:
 - (i) Provide sufficient details to enable SupplyWell to determine whether a referral must be made to the DBS or equivalent;
 - (ii) Cooperate with SupplyWell in the preparation and submission of any required disclosures; and
 - (iii) Retain appropriate records to demonstrate compliance with applicable safeguarding duties.

This obligation applies to any Assignment involving children, vulnerable adults, or any regulated activity as defined in safeguarding legislation.

11. Unsuitability of the Supply Educator

- a) The Customer undertakes to supervise the Supply Educator sufficiently to ensure the Customer's satisfaction with the Supply Educator's standards of work. If the Customer reasonably considers that the services of the Supply Educator are unsatisfactory, the Customer may terminate the Assignment either by instructing the Supply Educator to leave the Assignment immediately or by directing SupplyWell to remove the Supply Educator. SupplyWell may, in its absolute discretion, in such circumstances, reduce or cancel the Charges for the time worked by that Supply Educator, provided that the Customer has notified SupplyWell immediately that they have asked the Supply Educator to leave the Assignment or the Assignment terminates:
 - (i) within 4 hours of the Supply Educator commencing the Assignment where the Assignment is for more than 7 hours (or 1 day); or
 - (ii) within 2 hours for Assignments of 7 hours or less (or half a day); and
 - (iii) provided that notification of the unsuitability of the Supply Educator is confirmed in writing to SupplyWell within 48 hours of the termination of the Assignment.
- b) SupplyWell shall notify the Customer immediately if it receives or otherwise obtains information which gives SupplyWell reasonable grounds to believe that any Supply Educator supplied to the Customer is unsuitable for the Assignment and shall be

entitled to terminate the Assignment forthwith without prior notice and without liability. Notwithstanding, the Customer shall remain liable for all Charges incurred prior to the termination of the Assignment.

- c) The Customer shall notify SupplyWell immediately and without delay and in any event within 2 hours if the Supply Educator fails to attend work or has notified the Customer that they are unable to attend work for any reason.

12. Termination of the Assignment & Cancellation Policy

In the case of unsuitability of Supply Educator, or risk to the Supply Educator, any of the Customer, SupplyWell or the Supply Educator may terminate an Assignment at any time without prior notice and without liability (except in the case of termination by the Customer, who shall be liable for any Educator Wage Charges due under condition 8 above).

Once an Assignment Booking has been made, if an Assignment is terminated by the Customer **on the day of the Assignment**, a cancellation fee will be charged equal to 0.3 of the full daily rate, including relevant Employment Business fee.

A booking cannot be amended independently between the Supply Educator and the customer. It may only be amended by communication with SupplyWell.

If the termination of an Assignment is agreed independently between the Supply Educator and the customer, the customer must inform SupplyWell before the day of the Assignment, or they will be charged the full daily rate for the booking or the cancellation fee.

13. Liability

- a) For the avoidance of doubt, the provisions of Condition 13 in this Part C are in addition to and not in place of the provisions of Condition 12 in Part A of these Conditions.
- b) Whilst reasonable efforts are made by SupplyWell to give satisfaction to the Customer by ensuring reasonable standards of skill, integrity and reliability from the Supply Educator and to provide the same in accordance with the Assignment details as provided by the Customer, no liability is accepted by SupplyWell for any loss, expense, damage or delay arising from any failure to provide any Supply Educator for all or part of the Assignment or from the negligence, dishonesty, misconduct or lack of skill of the Supply Educator or if the Supply Educator terminates the Assignment for any reason. For the avoidance of doubt, SupplyWell does not exclude liability for death or personal injury arising from its own negligence or for any other loss which it is not permitted to exclude under law.

- a) Supply Educators supplied by SupplyWell pursuant to these Conditions are engaged under contracts for services. They are not the employees of SupplyWell but are deemed to be under the supervision and direction of the Customer from the time they report to take up duties and for the duration of the Assignment. The Customer agrees to be responsible for all acts, errors or omissions of the Supply Educator, whether wilful, negligent or otherwise as though the Supply Educator was on the payroll of the Customer.
- b) The Customer shall advise SupplyWell of any special health and safety matters about which SupplyWell is required to inform the Supply Educator and about any requirements imposed by law or by any professional body, which must be satisfied if the Supply Educator is to fill the Assignment.
- c) The Customer will also comply in all respects with all statutory provisions as are in force from time to time including, for the avoidance of doubt, but not limited to the WTR, the Data Protection Laws, Health and Safety At Work etc. Act 1974, the Management of Health and Safety at Work Regulations 1999 (as amended), by-laws, codes of practice and legal requirements to which the Customer is ordinarily subject in respect of the Customer's own staff (excluding the matters specifically mentioned in condition 7 above), including in particular the provision of adequate Employers and Public Liability Insurance cover for the Supply Educator during all Assignments.
- d) The Customer undertakes not to request the supply of a Supply Educator to perform the duties normally performed by a worker who is taking part in official industrial action or duties normally performed by a worker who has been transferred by the Customer to perform the duties of a person on strike or taking official industrial action.
- e) The Customer shall indemnify and keep indemnified SupplyWell against any Losses incurred by SupplyWell arising out of any Assignment or arising out of any non-compliance with, and/or as a result of any breach of, these Conditions by the Customer.
- f) The Customer shall inform SupplyWell in writing of any AWR Claim which comes to the notice of the Customer as soon as possible but no later than 7 calendar days from the day on which any such AWR Claim comes to the notice of the Customer.
- g) If the Supply Educator brings or threatens to bring any AWR Claim, the Customer undertakes to take such action and give such information and assistance as SupplyWell may request, and within any timeframe requested by SupplyWell and at the Customer's own cost, to avoid, dispute, resist, mitigate, compromise or defend any such AWR Claim and to appeal against any judgement given in respect thereof.

Schedule 1: 'Comparable Employee', 'Qualifying Period' and 'Temporary Work Agency'

1. Comparable Employee

"Comparable Employee" means as defined in Regulation 5(4) of the AWR being an employee of the Customer who:

- (a) works for and under the supervision of the Customer and is engaged in the same or broadly similar work as the Supply Educator having regard, where relevant, to whether the employee and the Supply Educator have a similar level of qualification and skill; and
- (b) works or is based at the same establishment as the Supply Educator or, where there is no comparable employee working or based at that establishment who satisfies the requirements of (a) above, works or is based at a different establishment and satisfies those requirements.

2. Qualifying Period

For the purpose of the definition of "Qualifying Period" in condition 1.1 of these Conditions, when calculating whether any weeks completed with the Customer count as continuous towards the Qualifying Period, where:

- (a) the Supply Educator has started working during an assignment and there is a break, either between assignments or during an assignment, when the Supply Educator is not working;
- (b) the break is:
 - (i) for any reason and not more than six Calendar Weeks;
 - (ii) wholly due to the fact that the Supply Educator is incapable of working in consequence of sickness or injury and the break is 28 Calendar Weeks or less; paragraph (iii) does not apply; and, if required to do so by SupplyWell, the Supply Educator has provided such written medical evidence as may reasonably be required;
 - (iii) related to pregnancy, childbirth or maternity and is at a time in a protected period, being a period beginning at the start of the pregnancy and ending at the end of the 26 weeks beginning with childbirth (being the birth of a living child or the birth of a child whether living or dead after 24 weeks of pregnancy) or, if earlier, when the Supply Educator returns to work;
 - (iv) wholly for the purpose of taking time off or leave, whether statutory or contractual, to which the Supply Educator is otherwise entitled which is:
 - i. ordinary, compulsory or additional maternity leave;
 - ii. ordinary or additional adoption leave;
 - iii. ordinary or additional paternity leave;
 - iv. time off or other leave not listed in paragraphs (iv)i, ii, or iii above; or
 - v. for more than one of the reasons listed in paragraphs (iv)i, ii, iii to iv above;
 - (v) wholly due to the fact that the Supply Educator is required to attend at any place in pursuance to being summoned for service as a juror and the break is 28 Calendar Weeks or less;
 - (vi) wholly due to a temporary cessation in the Customer's requirement for any worker to be present at the establishment and work in a particular role for a

- predetermined period of time according to the established customs and practices of the Customer;
- (vii) wholly due to a strike, lock-out or other industrial action at the Customer's establishment; or
 - (viii) wholly due to more than one of the reasons listed in paragraphs (ii), (iii), (iv), (v), (vi) or (vii); and
- (c) the Supply Educator returns to work in the same role with the Customer. Any weeks during which the Supply Educator worked for the Customer before the break shall be carried forward and treated as counting towards the Qualifying Period with any weeks during which the Supply Educator works for the Customer after the break. In addition, when calculating the number of weeks during which the Supply Educator has worked, where the Supply Educator has started working in a role during an Assignment and is unable to continue working for a reason described in paragraphs (b)(iii) or (b)(iv)i., ii, or iii., for the period that is covered by one or more such reasons, the Supply Educator shall be deemed to be working in that role with the Customer for the original intended duration or likely duration of the relevant Assignment, whichever is the longer. For the avoidance of doubt, time spent by the Supply Educator working on an assignment before 1 October 2011 does not count for the purposes of the definition of "Qualifying Period".

3. Temporary Work Agency

"Temporary Work Agency" means, as defined in Regulation 4 of the AWR, being a person engaged in the economic activity, public or private, whether or not operating for profit, and whether or not carrying on such activity in conjunction with others, of:

- (a) supplying individuals to work temporarily for and under the supervision and direction of hirers; or
- (b) paying for, or receiving or forwarding payment for, the services of individuals who are supplied to work temporarily for and under the supervision and direction of hirers.

Notwithstanding paragraph (b) of this definition, a person is not a Temporary Work Agency if the person is engaged in the economic activity of paying for or receiving or forwarding payments for, the services of individuals regardless of whether the individuals are supplied to work for hirers. For the purpose of this definition, a "hirer" means a person engaged in economic activity, public or private, whether or not operating for profit, to whom individuals are supplied, to work temporarily for and under the supervision and direction of that person.

Schedule 2: Transfer Fees

1. Transfer fee

- a) The Transfer Fee referred to in condition 8 shall be calculated as follows:
10% of the Remuneration payable to the Supply Educator during the first 12 months of the Engagement;

2. Period of Extended Hire

- b) The Period of Extended Hire, referred to in condition 8, before the Customer Engages a Supply Educator, shall be:
12 weeks.