



## WHEEL OF INDEPENDENCE

### TERMS AND CONDITIONS OF USE

#### PLEASE READ CAREFULLY BEFORE ACCESSING ANY SERVICES OR TOOLS AVAILABLE ON THIS WEBSITE:

We are Moor House School and College, a charity with Registered Charity Number 311871, whose registered office is located at Mill Lane, Hurst Green, Oxted, Surrey, RH8 9AQ ("**Supplier**", "**us**" or "**we**").

These terms and conditions of use ("**Terms**") set out the terms of the legal agreement ("**Agreement**") between you, the organisation (or, if you operate as a sole trader, the individual) on whose behalf you have completed our sign-up form ("**Customer**" or "**you**") for:

- the Wheel of Independence subscription services provided by the Supplier to you via [www.wheelofindependence.co.uk](http://www.wheelofindependence.co.uk) ("**Services**"); and
- the online software applications provided as part of the Services ("**Software**").

We license use of the Services and Software to you on the basis of these Terms. We do not sell the Services or Software to you. We, or our licensors, remain the owners of the Services, Software and any associated documentation at all times.

#### IMPORTANT NOTICE:

- BY CLICKING ON THE TICK BOX BUTTON THAT CONFIRMS THAT YOU ACCEPT THESE TERMS, AND BY SIGNING UP TO USE OUR SERVICES, YOU ARE AGREEING TO THESE TERMS, WHICH FORM PART OF YOUR AGREEMENT WITH US, AND WILL BIND YOU AND YOUR EMPLOYEES.
- THESE TERMS INCLUDE, IN PARTICULAR, LIMITATIONS ON LIABILITY IN CLAUSE 14.
- IF YOU DO NOT AGREE TO THESE TERMS, YOU MUST NOT ACCESS OR OTHERWISE USE THE SERVICES, SOFTWARE OR ANY ASSOCIATED DOCUMENTS (OR PERMIT ANY OF YOUR EMPLOYEES TO DO SO).

#### CHANGES TO THESE TERMS

We may need to change these Terms from time to time to reflect changes in law or best practice or to account for additional features that we introduce to the Services and/or Software.

We will give you at least thirty (30) days' notice of any change by sending you an email with details of the change or notifying you of a change when you next use the Service and/or Software.

If you do not accept the notified changes you will not be permitted to continue to use the Service and the Software, your Agreement with us will terminate [and you may apply to us for a refund of any prepaid, unspent Subscription Fees relating to the period following the effective date of termination.

You should print a copy of these Terms for future reference.

#### 1. Definitions and interpretation

- 1.1 In these Terms, unless the context otherwise requires, the definitions and rules of interpretation set out in Schedule 1 shall apply.



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## 2. Free Trial

2.1 The Customer's access to and use of the Software and Services will start with the Free Trial.

2.2 Before the expiry of the Free Trial, the Supplier will ask the Customer if it would like to purchase a Subscription and thereby continue to use the Software and Services on a paid-for basis following the Free Trial. If the Customer:

(a) notifies the Supplier within 30 days of the Supplier's request that it would like to purchase a Subscription, then:

(i) the Supplier shall invoice the Customer for the Subscription Fees in accordance with clause 10; and

(ii) subject to payment of the Subscription Fees, the Authorised Users shall be entitled to continue using the Software and Services in accordance with clause 3 and the remaining terms of these Terms; or

(b) either:

(i) fails to notify the Supplier within 30 days of the Supplier's request that it would like to purchase a Subscription; or

(ii) notifies the Supplier within 30 days of the Supplier's request that it would not like to purchase a Subscription,

then, our Agreement shall terminate with effect from the end of such 30 day period, no fees will be payable by the Customer in respect of the Services received during the Free Trial, and the Supplier shall delete all Customer Data in its possession or control within the period of 30 days following the effective date of such termination.

2.3 During the Free Trial, the Customer may notify the Supplier in writing that it does not wish to purchase a Subscription. Should such notification be received by the Supplier prior to the final day of the Free Trial, your Agreement shall terminate after expiry of the Free Trial and no fees will be payable by you in respect of the Services received during the Free Trial.

## 3. Subscription

3.1 Subject to the Customer purchasing the Subscription in accordance with clause 4.5 and clause 10.1, the restrictions set out in this clause 3 and the other terms and conditions of these Terms, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sub-licences, to permit the Customer Administrators and Authorised Users to use the Services during the Subscription Term solely for the Customer's internal business operations.

3.2 Following notification by the Customer to the Supplier of a designated Customer Administrator, the Supplier shall set up an administrator account for that Customer Administrator. The Customer Administrator shall be permitted to set up accounts for Authorised Users.

3.3 In relation to the entry of Customer Data, the Customer undertakes that:

(a) it will not allow or suffer any Subscription to be used by any person that is not a Customer Administrator or Authorised User;

(b) each Customer Administrator and Authorised User shall keep a secure password for his or her use of the Services, that such password shall be changed frequently, in-line



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with the Customer's relevant policy, and each Customer Administrator and Authorised User shall keep his/her password confidential;

3.4 The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under these Terms:
  - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, display, transmit, or distribute all or any portion of the Software in any form or media or by any means; or
  - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- (b) access all or any part of the Services in order to build a product or service which competes with the Services; or
- (c) use the Services to provide services to third parties; or
- (d) use the Services in a manner that may affect the Supplier's reputation, goodwill or standing; or
- (e) subject to clause 18.7, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party except the Customer Administrators and Authorised Users, or
- (f) attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this clause 3; and

3.5 The Customer shall use best endeavours to prevent any unauthorised access to, or use of, the Services and, in the event of any such unauthorised access or use, shall promptly notify the Supplier.

3.6 The rights provided under this clause 3 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

## 4. **Additional Student Profiles**

4.1 The Customer shall make and maintain a record of the number of Student Profiles it has created.

4.2 Subject to clause 4.4 and clause 4.5, the Customer may, from time to time during any Subscription Term, purchase a higher Subscription Tier to enable it to create Student Profiles in excess of the number permitted under its then current Subscription Tier, and the Supplier shall grant access to the Services in respect of such additional Student Profiles in accordance with the provisions of these Terms.

4.3 If, at any time whilst using the Services, the Customer exceeds, in respect of data entries for its use of the Services, the permitted number of Student Profiles under the relevant Subscription Tier, the Customer shall be deemed to have purchased the relevant higher Subscription Tier and shall immediately become liable to pay the difference in cost between the Customer's previous Subscription Tier and the Customer's new Subscription Tier, and the Supplier shall send an invoice to this effect to the Customer within a reasonable time.

4.4 The Customer shall use reasonable endeavours to notify the Supplier by email prior to exceeding the number of Student Profiles permitted under its Subscription Tier.



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- 4.5 The Customer shall, within 30 days of the date of any invoice issued by the Supplier pursuant to this clause 4, pay to the Supplier the relevant additional fees for such higher Subscription Tier and, if such additional Subscriptions are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated from the date of activation by the Supplier for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).
- 4.6 The Supplier shall be entitled to amend the Subscription Tiers from time to time during the Subscription Term, provided that any such amendments shall not apply to the Customer until the start of the Renewal Period immediately following the Initial Subscription Term or Renewal Period (as applicable) during which such amendment is made.
5. **Services**
- 5.1 The Supplier shall, during the Subscription Term, provide the Services to the Customer on and subject to the terms of these Terms.
- 5.2 The Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- (a) planned maintenance carried out during non-Business Days; and
  - (b) unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance.
- 5.3 The Supplier shall, as part of the Services and at no additional cost to the Customer, provide the Customer with the Supplier's standard customer support services during Normal Business Hours. Such support services shall be limited to:
- (a) provision of a web page displaying the answers to frequently asked questions in respect of the Software and online video tutorials at <https://www.moorhouseinstitute.com/wheel-of-independence-faq-help/>; and
  - (b) email support. Customer shall send any email enquiries to [woiinfo@moorhouseschool.co.uk](mailto:woiinfo@moorhouseschool.co.uk). Supplier shall use its reasonable endeavours to respond to email enquiries received at this email address within a) 2 Business Days or b) within a reasonable time where the email enquiry is received during a school holiday (as such term applies to the Supplier).
6. **Customer Data**
- 6.1 The Customer shall own all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.
- 6.2 The Supplier shall follow its archiving procedures for Customer Data as detailed in the Supplier Privacy Policy. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against the Supplier shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up for which it shall remain fully liable).
- 6.3 The Supplier shall, in providing the Services, comply with the Supplier Privacy Policy relating to the privacy and security of the Customer Data or as may be notified to the Customer from time



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to time, as such document may be amended from time to time by the Supplier in its sole discretion.

6.4 The Supplier may use the Customer Data to carry out research and testing on the effectiveness of the Services.

## 7. **Data Protection**

7.1 Each party acknowledges and agrees that:

(a) with regard to the Processing of Personal Data relating to:

(i) Students; and

(ii) Customer Administrators and Authorised Users, in connection with and for the purposes of the provision of the Services and the Software;

the Customer shall be the controller and the Supplier shall be the processor in relation to the processing of such Personal Data;

(b) the Supplier shall otherwise process Personal Data provided to it by the Customer, Customer Administrators and/or Authorised Users in accordance with the Supplier Privacy Policy.

7.2 The parties shall comply with the provisions and obligations imposed on them by the Data Protection Laws at all times when processing Personal Data in connection with these Terms. Such processing shall be in respect of the types of Personal Data, categories of Data Subjects, nature and purposes, and duration, set out in Schedule .

7.3 Each party shall maintain records of all processing operations under its responsibility that contain at least the minimum information required by the Data Protection Laws, and shall make such information available to any DP Regulator on request.

7.4 The Customer shall (acting in its capacity as data controller):

(a) ensure that any instructions it issues to the Supplier shall comply with the Data Protection Laws; and

(b) have sole responsibility for the accuracy, quality and legality of Personal Data, and the means by which the data controller acquired Personal Data, supplied by or on behalf of the Customer to Supplier in connection with these Terms; and

(c) establish the legal basis for the processing of such Personal Data under Data Protection Laws, including providing all fair processing and transparency notices and obtaining all consents as may be required under Data Protection Laws (including, without limitation, the provision of fair processing notices to, and the collection of applicable consents from, Students) in order for the Supplier to process the Personal Data as contemplated by these Terms.

7.5 To the extent the Supplier receives from, or processes Personal Data on behalf of, the Customer (as data controller), the Supplier shall:

(a) process such Personal Data (i) only in accordance with the Customer's written instructions from time to time (including those set out in these Terms) provided such instructions are lawful and unless it is otherwise required by applicable law (in which case, unless such law prohibits such notification on important grounds of public interest,



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the Supplier shall notify the Customer of the relevant legal requirement before processing the Personal Data), and (ii) only for the duration of these Terms;

- (b) take commercially reasonable steps to ensure its personnel who are authorised to have access to such Personal Data, and ensure that any such personnel are committed to confidentiality or are under an appropriate statutory obligation of confidentiality when processing such Personal Data;
- (c) taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the Processing, implement technical and organisational measures and procedures to ensure a level of security for such Personal Data appropriate to the risk, including the risks of accidental, unlawful or unauthorised destruction, loss, alteration, disclosure, dissemination or access;
- (d) unless such transfer is to the Customer or an Authorised User, only transfer, access or process Personal Data outside of the UK where such transfer, access or processing is based on an "adequacy decision", is otherwise "subject to appropriate safeguards" or if a "derogation for specific situations" applies, each within the meanings given to them in Articles 45, 46 and 49 of UK GDPR respectively;
- (e) inform the Customer without undue delay upon becoming aware of any such Personal Data (while within the Supplier's or its subcontractors' or affiliates' possession or control) being subject to a personal data breach (as defined in Article 4 of GDPR);
- (f) not disclose any Personal Data to any Data Subject or to a third party other than at the written request of the Customer or as expressly provided for in these Terms;
- (g) except for Personal Data of which the data processor is also a data controller and except as required by law or in order to defend any actual or possible legal claims, as the Customer so directs, take reasonable steps to return or irretrievably delete all Personal Data on termination or expiry of these Terms, and not make any further use of such Personal Data;
- (h) at the Customer's expense and subject to clause 7.5(i) in relation to audits, provide to the Customer and any DP Regulator all information and assistance reasonably necessary to demonstrate or ensure compliance with the obligations in this clause 7 and/or the Data Protection Laws;
- (i) permit the Customer or its representatives to access any relevant premises, personnel or records of the Supplier on reasonable notice to audit and otherwise verify compliance with this clause 7, subject to the following requirements:
  - (i) the Customer may perform such audits no more than once per year or more frequently if required by Data Protection Laws;
  - (ii) the Customer may use a third party to perform the audit on its behalf, provided such third party executes a confidentiality agreement acceptable to the Supplier before the audit;
  - (iii) audits must be conducted during regular business hours, subject to the Supplier's policies, and may not unreasonably interfere with the Supplier's business activities;
  - (iv) the Customer must provide the Supplier with any audit reports generated in connection with any audit at no charge unless prohibited by applicable law. The Customer may use the audit reports only for the purposes of meeting its audit





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requirements under Data Protection Laws and/or confirming compliance with the requirements of this clause 7. The audit reports shall be confidential;

- (v) to request an audit, the Customer must first submit a detailed audit plan to the Supplier at least 6 (six) weeks in advance of the proposed audit date. The audit must describe the proposed scope, duration and start date of the audit. The Supplier will review the audit plan and inform the Customer of any concerns or questions (for example, any request for information that could compromise the Supplier's confidentiality obligations or its security, privacy, employment or other relevant policies). The Supplier will work cooperatively with the Customer to agree a final audit plan;
  - (vi) nothing in this clause 7.5(i) shall require the Supplier to breach any duties of confidentiality owed to any of its clients, employees or Third Party Providers; and
  - (vii) all audits are at the Customer's sole cost and expense;
  - (j) at the Customer's expense, take such steps as are reasonably required to assist the Customer in ensuring compliance with its obligations under Articles 30 to 36 (inclusive) of GDPR;
  - (k) notify the Customer as soon as reasonably practicable if it receives a request from a Data Subject to exercise its rights under the Data Protection Laws in relation to that person's Personal Data; and
  - (l) provide the Customer with reasonable co-operation and assistance in relation to any request made by a Data Subject to exercise its rights under the Data Protection Laws in relation to that person's Personal Data provided that the Customer shall be responsible for the Supplier's costs and expenses arising from such co-operation and assistance.
- 7.6 If either party receives any complaint, notice or communication which relates directly or indirectly to the processing of Personal Data by the other party or to either party's compliance with the Data Protection Laws, it shall as soon as reasonably practicable notify the other party and it shall provide the other party with commercially reasonable co-operation and assistance in relation to any such complaint, notice or communication.
- 7.7 The Customer agrees that the Supplier may disclose Personal Data to its advisers, auditors or other third parties as reasonably required in connection with the performance of its obligations under these Terms. In addition, the Supplier may engage third parties to process Personal Data on behalf of the Customer ("**Sub-Processors**"). The current list of Sub-Processors is set out in Schedule 2.
- 7.8 If the Supplier engages a new Sub-Processor, the Supplier shall inform the Customer of the engagement by sending an email notification to the Customer and the Customer may object to the engagement of such Sub-Processor by notifying the Supplier within [10 Business Days] of the Supplier's email, provided that such objection shall be on reasonable, substantial grounds directly related to such Sub-Processor's ability to comply with substantially similar obligations to those set out in this clause 7. If the Customer does not so object, the engagement of such Sub-Processor shall be deemed accepted by the Customer. If the Customer does so object, the Supplier shall use reasonable endeavours to make available to the Customer a change in the Services or recommend a reasonable change to the Customer's configuration of the Services to avoid processing of Personal Data by the objected-to new Sub-Processor without unreasonably burdening the Customer. If the Supplier is unable to make available such change within a reasonable period of time, which shall not exceed 30 days, the Customer may terminate these Terms with respect only to those Services which cannot be provided by the Supplier without the use of the objected-to new Sub-Processor by providing written notice to the Supplier.



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7.9 The Supplier shall ensure that its contracts with each Sub-Processor shall impose obligations on the Sub-Processor that are materially equivalent to the obligations to which the Supplier is subject under these Terms in relation to the processing of Personal Data.

7.10 Any sub-contracting or transfer of Personal Data pursuant to this clause 7 shall not relieve the Supplier of any of its liabilities, responsibilities and obligations to the Customer under these Terms and the Supplier shall remain liable for the acts and omissions of its Sub-Processors.

## 8. **Supplier's obligations**

8.1 The Supplier undertakes that the Services will be performed with reasonable skill and care.

8.2 The undertaking at clause 8.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the undertaking at clause 8.1, Supplier will, at its expense, use reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 8.1. Notwithstanding the foregoing, the Supplier:

(a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services or the information obtained by the Customer through the Services will meet the Customer's requirements; and

(b) 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.

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

8.4 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under these Terms.

## 9. **Customer's obligations**

9.1 The Customer shall:

(a) provide the Supplier with:

(i) all necessary co-operation in relation to this Agreement; and

(ii) all necessary access to such information, as may be required by the Supplier,

in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;

(b) without affecting its other obligations under this Agreement, comply with all applicable laws and regulations with respect to its activities under this Agreement;

(c) carry out all other Customer responsibilities set out in these Terms in a timely and efficient manner. In the event of any delays in the Customer's provision of such





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assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;

- (d) ensure that the Authorised Users use the Services in accordance with the terms and conditions of these Terms, and shall be responsible for any Authorised User's breach of these Terms;
- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under these Terms, including without limitation the Services;
- (f) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- (g) be, to the extent permitted by law and except as otherwise expressly provided in these Terms, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

9.2 The Customer shall ensure that all Customer Administrators and Authorised Users are provided with and sign up to the End-User Terms of Use prior to their use of the Services. The Customer shall ensure that all Customer Administrators and Authorised Users comply with the End-User Terms of Use.

9.3 The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with a Customer Administrator's or Authorised User's failure to comply with the End-User Terms of Use.

## 10. Charges and payment

10.1 The Customer shall pay the Subscription Fees to the Supplier for the Subscriptions in accordance with this clause 10 and the applicable Subscription Tier.

- (a) The Supplier shall invoice the Customer:
  - (i) on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
  - (ii) subject to clause 15.1, at least 30 days prior to each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period,

and the Customer shall pay each invoice by BACS using the account details as notified to the Customer by the Supplier from time to time within 30 days after the date of such invoice.

10.2 If the Supplier has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of the Supplier, the Supplier may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid.

10.3 All amounts and fees stated or referred to in these Terms:

- (a) shall be payable in pounds sterling;



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- (b) are, subject to clause 14.3(b), non-cancellable and non-refundable;
- (c) are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.

10.4 The Supplier shall be entitled to increase the Subscription Fees in respect of any one or several Subscription Tier(s) at the start of each Renewal Period upon 90 days' prior notice to the Customer.

## 11. Proprietary rights

11.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services. Except as expressly stated herein, these Terms do not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services.

11.2 The Customer shall, when quoting the website from which the Services are provided, quote the name of the website in the following format: "WHEEL OF INDEPENDENCE™: Framework

11.3 The Supplier confirms that it has all the rights in relation to the Services that are necessary to grant all the rights it purports to grant under, and in accordance with, these Terms.

## 12. Confidentiality

12.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under these Terms. A party's Confidential Information shall not be deemed to include information that:

- (a) is or becomes publicly known other than through any act or omission of the receiving party;
- (b) was in the other party's lawful possession before the disclosure;
- (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
- (d) is independently developed by the receiving party, which independent development can be shown by written evidence.

12.2 Subject to clause 12.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of these Terms.

12.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of these Terms.

12.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 12.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

12.5 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.



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- 12.6 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.
- 12.7 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.
- 12.8 No party shall make, or permit any person to make, any public announcement concerning our Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 12.9 The above provisions of this clause 12 shall survive termination of our Agreement, howsoever arising.
13. **Indemnity**
- 13.1 The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services.
- 13.2 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- (a) a modification of the Services by anyone other than the Supplier; or
  - (b) the Customer's use of the Services in a manner contrary to the instructions given to the Customer by the Supplier; or
  - (c) the Customer's use of the Services after notice of the alleged or actual infringement from the Supplier or any appropriate authority.
14. **Limitation of liability**
- 14.1 Except as expressly and specifically provided in these Terms:
- (a) the Customer assumes sole responsibility for results obtained from the use of the Services by the Customer, and for conclusions drawn from such use;
  - (b) the Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction;
  - (c) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and
  - (d) the Services are provided to the Customer on an "as is" basis.
- 14.2 Nothing in these Terms excludes the liability of the Supplier:
- (a) for death or personal injury caused by the Supplier's negligence; or
  - (b) for fraud or fraudulent misrepresentation.
- 14.3 Subject to clause 14.1 and clause 14.2:



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- (a) the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and
- (b) the Supplier's total aggregate liability in contract tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the total Subscription Fees paid for the Subscriptions during the 12 months immediately preceding the date on which the claim arose.

## 15. Term and termination

15.1 Our Agreement with you shall, unless otherwise terminated as provided in this clause 15, commence on the Effective Date and shall continue for the a period of 12 months (the "**Initial Subscription Term**") unless terminated earlier in accordance with its terms. Upon expiry of the Initial Subscription Term, our Agreement shall be automatically renewed for successive terms of 12 months (each a "**Renewal Period**"), unless:

- (a) either party notifies the other party of termination, in writing, at least 30 days before the end of the Initial Subscription Term or any Renewal Period, in which case the Agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
- (b) otherwise terminated in accordance with the provisions of these Terms;

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the "**Subscription Term**".

15.2 Without affecting any other right or remedy available to it, the Supplier may terminate this Agreement with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
- (b) the Customer commits a material breach of any other term of these Terms which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so; or
- (c) the Customer repeatedly breaches any of the terms of these Terms in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of our Agreement.

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

- (a) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
- (b) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise



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or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- (e) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (g) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (h) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.3(a) to clause 15.3(f) (inclusive); or
- (i) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

#### 15.4 On termination of this Agreement for any reason:

- (a) all licences granted under these Terms shall immediately terminate and the Customer shall immediately cease all use of the Services;
- (b) each party shall return and make no further use of any equipment, property and other items (and all copies of them) belonging to the other party;
- (c) the Supplier may destroy, delete or otherwise dispose of any of the Customer Data in its possession, unless the Supplier receives, no later than ten (10) days after the effective date of the termination of this Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data; and
- (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected or prejudiced.



## 16. Force majeure

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

## 17. Notices

17.1 Any notice to be given to a party under this Agreement shall be in writing, signed by or on behalf of the party giving it, and shall be served: (i) personally; (ii) by prepaid first class post or recorded delivery (or international equivalent, where relevant); or (iii) by email, in relation to the Customer, to the email address(es) given by the Customer for the Customer Administrator(s), and in relation to the Supplier, to [woiinfo@moorhouseschool.co.uk](mailto:woiinfo@moorhouseschool.co.uk). Either party may, by a notice given in accordance with this clause, change its address for the purposes of this clause.

17.2 A notice shall be deemed to have been served:

- (a) at the time of delivery, if delivered personally; or
- (b) 48 hours after posting, in the case of an address in the same territory and 96 hours after posting for any other address; or
- (c) one hour after completion of transmission by the sender, if sent by email (save where the email receives an automated response that it is undelivered or undeliverable in which event this deeming provision shall not apply).

17.3 If the deemed time of service is not during normal business hours in the country of receipt, the notice shall be deemed served at the opening of business on the next Business Day in that country.

## 18. Other important terms

18.1 If there is an inconsistency between any of the provisions in the main body of these Terms and the Schedules, the provisions in the main body of these Terms shall prevail.

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

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

18.4 If any provision or part-provision of these Terms is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of these Terms. If any provision or part-provision of these Terms is deemed deleted under this clause 18.4 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.





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- 18.5 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 18.6 Each party acknowledges that in entering into this Agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Terms. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in these Terms. Nothing in this clause shall limit or exclude any liability for fraud.
- 18.7 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement. The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 18.8 Nothing in these Terms is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 18.9 The Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 18.10 The Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).



## Schedule 1

### Definitions

1.1 The following definitions shall apply in these Terms:

**"Agreement"** means your agreement with us relating to the use of the Services and Software, incorporating these Terms and including any schedules hereto.

**"Authorised Users"** means those employees of the Customer who are authorised by the Customer to use the Services, as further described in clause 3.

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

**"Change of Control"** shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression **"change of control"** shall be construed accordingly.

**"Confidential Information"** information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 12.6 or clause 12.7.

**"Customer Administrators"** means the representatives of the Customer authorised by the Customer to administer the Customer's use of the Services, and assign access to Authorised Users to use the Services, subject to the Customer's Subscription Tier.

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

**"Data Subject"**, **"Personal Data"**, **"processing"**, **"processor"** and **"controller"** shall have the meanings set out in the UK GDPR.

**"Data Protection Laws"** means: (i) EU Regulation 2016/679 ("**GDPR**"); (ii) any laws or regulations ratifying, implementing, adopting, supplementing or replacing the GDPR (including, in the UK, the Data Protection Act 2018 ("**DPA**") and (to the extent in force) the UK GDPR as defined in The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 ("**UK GDPR**"); (iii) any laws and regulations implementing or made pursuant to EU Directive 2002/58/EC (as amended by 2009/136/EC) (including, in the UK, the Privacy and Electronic Communications (EC Directive) Regulations 2003); and (iv) any guidance or codes of practice issued by a governmental or regulatory body or authority in relation to compliance with the foregoing; in each case, as updated, amended or replaced from time to time.

**"DP Regulator"** means any governmental or regulatory body or authority with responsibility for monitoring or enforcing compliance with the Data Protection Laws.

**"Effective Date"** means the date of your acceptance of these Terms.

**"Free Trial"** means the period of 30 days immediately following the Effective Date, during which period the Customer shall be permitted to use the Services and the Software without payment.

**"Initial Subscription Term"** means the initial term of this Agreement, as described in clause 15.

**"Normal Business Hours"** means 8.00 am to 5.00 pm local UK time, each Business Day.

**"Renewal Period"** means the period described in clause 15.1.



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"**Services**" means the subscription services provided by the Supplier to the Customer under this Agreement via [www.wheelofindependence.co.uk](http://www.wheelofindependence.co.uk), or any other website notified to the Customer by the Supplier from time to time, as more particularly described on our website.

"**Software**" means the online software applications provided by the Supplier as part of the Services.

"**Student**" means a student of the Customer's, in relation to which an Authorised User creates a profile on, and uses, the Software.

"**Student Profile**" means a profile created by an Authorised User on the Software containing information in respect of a Student.

"**Subscription**" means the subscription purchased by the Customer pursuant to clause 10.1 which entitles Authorised Users to access and use the Services, accordance with this Agreement.

"**Subscription Fees**" means the subscription fees payable by the Customer on a per annum basis to the Supplier for the Subscription, as set out at [<https://www.moorhouseinstitute.com/wheel-of-independence/>].

"**Subscription Term**" has the meaning given in clause 15.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

"**Subscription Tier**" means one of the subscription tiers as described at <https://www.moorhouseinstitute.com/wheel-of-independence/>, as such is updated from time to time by the Supplier.

"**Supplier Privacy Policy**" means the then-current privacy policy of the Supplier, a copy of which can be found at <https://www.wheelofindependence.co.uk/content/pdfs/WOI-privacy-policy.pdf>.

"**End-User Terms of Use**" means the terms of use concerning Customer Administrators' and Authorised Users' use of the Software, as made available by the Supplier to the Customer, Customer Administrators and Authorised Users at <https://www.wheelofindependence.co.uk/content/pdfs/WOI-terms-of-use.pdf>.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of these Terms.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.



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- 1.9 A reference to writing or written includes e-mail but not faxes.
- 1.10 References to clauses and Schedules are to the clauses and schedules of these Terms; references to paragraphs are to paragraphs of the relevant Schedule to these Terms.



## Schedule 2

### Processing, Personal Data and Data Subjects

The Personal Data processing activities carried out by the Supplier under these Terms may be described as follows:

1. Subject matter of processing

The WHEEL OF INDEPENDENCE™ Framework enables customers to enter, store, and retrieve data on a Student's current level and progress in respect of their independence. This information is stored on the Supplier's server. The Customer can look at individual and group data to gather an overview of the progress made by a cohort or whole school/college. The Supplier will also use the Personal Data in order to aggregate the Personal Data to evaluate and improve the tool and for benchmarking purposes.

Personal Data relating to Customer Administrators and Authorised Users will be processed as necessary for the purposes of delivering the WOI tool and providing the Services

2. Nature and purpose of processing

The purpose of the WHEEL OF INDEPENDENCE™ Framework is to store data in a manner which is easily accessible and interpretable, such as individual reporting and target sheets, to enable customers to track their Students' progress in respect of their level of independence. The data is entered by the Customer on the tool, stored on the Supplier's cloud-hosted servers, and structured in a way so as to make it easily interpretable for the Customer. The Customer can retrieve its full data (and not any other customer's data).

Personal Data relating to the Customer Administrators and Authorised Users will only be processed in order to deliver the WOI tool and provide the Services.

3. Categories of Personal Data

- Name, surname
- In relation to Students only:
  - Date of birth
  - Pupil's entitlement to pupil premium (e.g. for free school meals)
  - Gender
  - Notes on each pupil's progress in respect of independence in the following areas:
    - meal preparation;
    - time management;
    - leisure;
    - self-care;
    - house-keeping;
    - Laundry;



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- Food shopping; and
  - Money skills.
- In relation to Authorised Users only, email address.

#### 4. Categories of data subjects

The data collected is about the Students of the Customer in respect of whom data is inputted by the Customer into the WHEEL OF INDEPENDENCE™ framework.

Personal Data relating to the Customer Administrators and Authorised Users will also be processed in connection with the performance of the Services.

#### 5. Duration

Personal Data will be processed for the duration of the Agreement and for a maximum period of two (2) months' following termination of the Customer's subscription, unless the Customer requests that the Supplier deletes its Personal Data prior to this date.

#### 6. Sub-Processors

<b>Sub-Processor</b>	<b>Contracting entity details</b>	<b>Sub-contracted Services</b>	<b>Country where service is being provided from</b>
<b>Microsoft Azure</b>	<b>Microsoft Limited</b> Microsoft Campus Thames Valley Park Reading Berkshire RG6 1WG United Kingdom	Cloud hosted infrastructure.	UK  <i>Data stored at rest in UK</i>
<b>Scope360</b>	Scope360 Solutions Ltd	IT and data migration and support services	UK