

soLEARN™

SOFTWARE-AS-A-SERVICE LICENCE AGREEMENT

THIS AGREEMENT is dated [DATE]

PARTIES

- (1) SOLEARN LTD incorporated and registered in England and Wales (Company Registration 11072014) whose registered office is at Avon Mill Lane, Keynsham, Bristol BS31 2UG, the **Supplier**
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales (Company Registration No. [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS], the **Customer**

BACKGROUND

- (A) The Supplier has developed an online knowledge management and e-learning software application and platform (**soLearn™**) which it makes available to the Customer via the internet on a pay-per-user licence basis.
- (B) The Customer wishes to use the Supplier's service in its business operations.
- (C) The Supplier has agreed to provide and the Customer has agreed to take and pay for the Supplier's service subject to the terms and conditions of this Agreement.

AGREED TERMS

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

Authorised Users: those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation, as further described in clause 2.2(d).

Business Day: any day which is not a Saturday, Sunday or public holiday in the United Kingdom.

Change of Control: the direct or indirect acquisition of either the majority of the voting stock, or of all, or substantially all, of the assets, of a party by another entity in a single transaction or a series of transactions.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 10.

Customer Data: the data inputted by the Customer, 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.

Documentation: the document(s) made available to the Customer by the Supplier online via www.solearn.com or such other web address notified by the Supplier to the Customer from time to time which sets out a description of the Services and the user instructions for the Services.

Effective Date: the date of this Agreement.

Initial Licence Term: the initial 12 month period commencing on the Effective Date.

Normal Business Hours: 09.00 am to 17.00 pm local UK time, each Business Day.

Renewal Period: the period described in clause 13.1.

Services: the licenced services provided by the Supplier to the Customer under this Agreement via www.solearn.com or any other website notified to the Customer by the Supplier from time to time, as more particularly described in the Documentation.

Software: the online **soLEARN™** software application provided by the Supplier as part of the Services.

Licence Fees: the licence fees payable by the Customer to the Supplier for the User Licences, as set out in Schedule 1.

Licence Term: has the meaning given in clause 13.1.

Standard Service Level Agreement: the Supplier's policy for providing access, support and data back-up in relation to the Services as set out at Schedule 2.

User Licences: the user licences purchased by the Customer pursuant to clause 8.1 which entitle Authorised Users to access and use the Services and the Documentation in accordance with this Agreement.

Virus and Hacking: any thing, person or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, malware, viruses and other similar things or devices.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 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 Words in the singular shall include the plural and vice versa and a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.7 A reference to writing or written includes fax and e-mail communication.
- 1.8 References to clauses and schedules are to the clauses and schedules of this Agreement.

2. USER LICENCES

- 2.1 Subject to the Customer purchasing the User Licences in accordance with clause 3.3 and clause 8.1, the restrictions set out in this clause 2 and the other terms and conditions of this Agreement, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Services and the Documentation during the Licence Term solely for the Customer's internal business operations.
- 2.2 In relation to the Authorised Users, the Customer undertakes that:
 - (a) the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number of User Licences it has purchased from time to time;
 - (b) it will not allow or suffer any User Licence to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation;
 - (c) each Authorised User shall keep a secure password for his use of the Services and Documentation, that such password shall be changed in accordance with the Customer's own security access protocols or, if none applicable, at least monthly and that each Authorised User shall keep his password confidential;
 - (d) it shall maintain a record of current Authorised Users and provide such record to the Supplier within 5 Business Days of the Supplier's request at any time;
 - (e) it shall permit the Supplier to audit the Services in order to establish the name and password of each Authorised User. Such audit shall be exercised in such a manner as not to substantially interfere with the Customer's normal conduct of business;
 - (f) if any of the audits referred to in clause 2.2(e) reveal that the number of Authorised Users password has been provided to any individual who is not an Authorised User, then without prejudice to the Supplier's other rights, the Customer shall promptly disable such passwords and the Supplier shall not issue any new passwords to any such individual; and

(g) if any of the audits referred to in clause 2.2(e) reveal that the Customer has underpaid Licence Fees to the Supplier, the Customer shall pay to the Supplier an amount equal to such underpayment as calculated in accordance with the prices set out in Schedule 1 within 10 Business Days of the date of the relevant audit.

2.3 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity; or
- (f) causes damage or injury to any person or property;

and the Supplier reserves the right, without liability to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

2.4 The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
 - (i) and except to the extent expressly permitted under this Agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
 - (ii) attempt to 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 and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
- (c) use the Services and/or Documentation to provide services to third parties; or
- (d) subject to clause 18.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
- (e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2; and

2.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.

2.6 The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer unless such

companies are fully disclosed and make use of fully paid for user licences as if they were the Customer and fully comply with all the Terms & Condition of this Agreement.

3. ADDITIONAL USER LICENCES

- 3.1 Subject to clause 3.2 and clause 3.3, the Customer may, from time to time during any Licence Term, purchase additional User Licences in excess of the number set out in Schedule 1 and the Supplier shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of this Agreement.
- 3.2 If the Customer wishes to purchase additional User Licences, the Customer shall notify the Supplier in writing. The Supplier shall evaluate such request for additional User Licences and respond to the Customer with approval or disapproval of the request (such approval not to be unreasonably withheld).
- 3.3 If the Supplier approves the Customer's request to purchase additional User Licences, the Customer shall, within 30 days of the date of the Supplier's invoice, pay to the Supplier the relevant fees for such additional User Licences as set out in Schedule 1 and, if such additional User Licences are purchased by the Customer part way through the Initial Licence Term or any Renewal Period (as applicable), such fees shall be pro-rated for the remainder of the Initial Licence Term or then current Renewal Period (as applicable).

4. SERVICES

- 4.1 The Supplier shall, during the Licence Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this Agreement.
- 4.2 The Supplier shall provide the Services in accordance with the Standard Service Level Agreement for the Services set out in Schedule 2. The Customer may purchase enhanced support services separately at the Supplier's then current rates.
- 4.3 The Supplier shall provide the Services for a minimum of 12 months from the date of this Agreement.

5. CUSTOMER DATA AND DATA PROTECTION

- 5.1 The Customer shall own all rights, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 5.2 The Supplier shall follow its archiving procedures for Customer Data as set out in the Standard Service Level Agreement. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained in accordance with the Standard Service Level Agreement. 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).
- 5.3 The Supplier shall, in providing the Services, comply with its privacy policy relating to the privacy and security of the Customer Data available at www.solearn.com or such other website address as may be notified to the Customer from time to time, as such document may be amended from time to time by the Supplier in its sole discretion.
- 5.4 If the Supplier processes any personal data on the Customer's behalf when performing its obligations under this Agreement, the parties record their intention that the Customer shall be the Data Controller and the Supplier shall be a Data Processor within the meaning of applicable data protection legislation and in any such case:
- (a) the Customer acknowledges and agrees that the personal data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to carry out the Services and the Supplier's other obligations under this Agreement;
 - (b) the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to the Supplier so that the Supplier may lawfully use, process and transfer the personal data in accordance with this Agreement on the Customer's behalf;
 - (c) the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;
 - (d) the Supplier shall process the personal data only in accordance with the terms of this Agreement and any lawful instructions reasonably given by the Customer from time to time; and
 - (e) each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.
- 5.5 The provisions shall apply to the processing of Personal Data, carried out for the Data Controller by the Data Processor, and to all Personal Data held by the Data Processor in relation to all such processing.
- 5.6 The Data Processor is only to carry out the Services, and only to process the Personal Data received from the Data Controller:
- a) for the purposes of those Services and not for any other purpose;
 - b) to the extent and in such a manner as is necessary for those purposes; and
- 5.7 All instructions given by the Data Controller to the Data Processor shall always be in compliance with the GDPR and other applicable laws. The Data Processor shall act only on instructions from the Data Controller unless the Data Processor is required by law to do otherwise (as per Article 29 of the GDPR).

- 5.8 The Data Processor shall promptly comply with any request from the Data Controller requiring the Data Processor to amend, transfer, delete, or otherwise dispose of the Personal Data.
- 5.9 The Data Processor shall transfer all Personal Data to the Data Controller on the Data Controller's request in the formats, at the times, and in compliance with the Data Controller's written instructions where reasonable.
- 5.10 Both Parties shall comply always with the GDPR and other applicable laws and shall not perform their obligations under this contract between themselves in such way as to cause either Party to breach any of its applicable obligations under the GDPR.
- 5.11 The Data Controller hereby warrants, represents, and undertakes that the Personal Data shall comply with the GDPR in all respects including, but not limited to, its collection, holding, and processing.
- 5.12 The Data Processor agrees to comply with any reasonable measures required by the Data Controller to ensure that its obligations under this Statement are satisfactorily performed in accordance with all applicable legislation from time to time in force (including, but not limited to, the GDPR) and any best practice guidance issued by the ICO.
- 5.13 The Data Processor shall provide all reasonable assistance (at the Data Controller's cost where applicable) to the Data Controller in complying with its obligations under the GDPR with respect to the security of processing, the notification of personal data breaches, the conduct of data protection impact assessments (where applicable), and in dealings with the ICO.
- 5.14 When processing the Personal Data on behalf of the Data Controller, the Data Processor shall:
- a) process the Personal Data only to the extent, and in such manner, as is necessary to comply with its obligations to the Data Controller or as may be required by law (in which case, the Data Processor shall inform the Data Controller of the legal requirement in question before processing the Personal Data for that purpose unless prohibited from doing so by law);
 - b) implement appropriate technical and organisational measures, and take all steps necessary to protect the Personal Data against unauthorised or unlawful processing, accidental loss, destruction, damage, alteration, or disclosure;
 - c) if so requested by the Data Controller (and within the timescales required by the Data Controller where reasonable) supply further details of the technical and organisational systems in place to safeguard the security of the Personal Data held and to prevent unauthorised access;
 - d) make available to the Data Controller all such information as is reasonably required and necessary to demonstrate the Data Processor's compliance with the GDPR; and
 - e) inform the Data Controller immediately if it is asked to do anything that infringes the GDPR or any other applicable data protection legislation.
- 5.15 The Data Controller shall be liable for all action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and payments on a solicitor and client basis), or demand suffered or incurred by, awarded against, or agreed to be paid by, the Data Processor and any Sub-Processor arising directly or in connection with:
- a) any non-compliance by the Data Controller with the GDPR or other applicable legislation;

- b) any Personal Data processing carried out by the Data Processor or Sub-Processor in accordance with instructions given by the Data Controller that infringe the GDPR or other applicable legislation; or
 - c) any breach by the Data Controller of its obligations under this contract.
- 5.16 The Data Controller shall not be entitled to claim back from the Data Processor or Sub-Processor any sums paid in compensation by the Data Controller in respect of any damage to the extent that the Data Controller is liable to indemnify the Data Processor or Sub-Processor.
- 5.17 Nothing in this contract (and this Clause 5) shall relieve either Party of, or otherwise affect, the liability of either Party to any data subject, or for any other breach of that Party's direct obligations under the GDPR. Furthermore, the Data Processor hereby acknowledges that it shall remain subject to the authority of the ICO and shall co-operate fully therewith, as required, and that failure to comply with its obligations as a data processor under the GDPR may render it subject to the fines, penalties, and compensation requirements set out in the GDPR.
- 5.18 The Data Processor shall, at the written request of the Data Controller, delete (or otherwise dispose of), the Personal Data or return it to the Data Controller in the format(s) reasonably requested by the Data Controller, at the Data Controller's expense, within a reasonable time after the earlier of the following:
- a) the end of the provision of the Services; or
 - b) the processing of that Personal Data by the Data Processor is no longer required for the performance of the Data Processor's obligations under the Service Agreement.
- 5.19 Following the deletion, disposal, or return of the Personal Data, the Data Processor shall delete (or otherwise dispose of) all further copies of the Personal Data that it holds, unless retention of such copies is required by law, in which case the Data Processor shall inform the Data Controller of such requirement(s) in writing.
- 5.20 All Personal Data to be deleted or disposed of by the Data Processor under this Agreement shall be deleted or disposed of using the following method(s): Secure deletion or shredding.

6. SUPPLIER'S OBLIGATIONS

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

- (a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; nor that the Services, Documentation and/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 and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 6.3 This Agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.
- 6.4 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.

7. CUSTOMER'S OBLIGATIONS

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;
 - (iii) in order to render the Services, including but not limited to Customer Data, security access information and configuration services;
- (b) 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 this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this agreement and shall be responsible for any Authorised User's breach of this Agreement;
- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this agreement, including without limitation the Services;
- (f) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- (g) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising

from or relating to the Customer's network connections or telecommunications links or caused by the internet.

8. CHARGES AND PAYMENT

- 8.1 The Customer shall pay the Licence Fees to the Supplier for the User Licences in accordance with this clause 8 and Schedule 1.
- 8.2 The Customer shall on the Effective Date provide to the Supplier valid, up-to-date and complete credit card details or approved purchase order information acceptable to the Supplier and any other relevant valid, up-to-date and complete contact and billing details and, if the Customer provides:
- (a) its credit card details to the Supplier, the Customer hereby authorises the Supplier to bill such credit card:
 - (i) on the Effective Date for the Licence Fees payable in respect of the Initial Licence Term; and
 - (ii) subject to clause 13.1, on each anniversary of the Effective Date for the Licence Fees payable in respect of the next Renewal Period;
 - (b) its approved purchase order information to the Supplier, the Supplier shall invoice the Customer:
 - (i) on the Effective Date for the Licence Fees payable in respect of the Initial Licence Term; and
 - (ii) subject to clause 13.1, at least 30 days prior to each anniversary of the Effective Date for the Licence Fees payable in respect of the next Renewal Period, and the Customer shall pay each invoice within 30 days after the date of such invoice.
- 8.3 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:
- (a) the Supplier may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
 - (b) the Supplier may at its sole discretion exercise its statutory right to claim interest and compensation for debt recovery costs under applicable late payment legislation at the date the relevant invoice was issued, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 8.4 All amounts and fees stated or referred to in this Agreement:
- (a) shall be payable in pounds sterling;
 - (b) are, subject to clause 12.4(b) non-cancellable and non-refundable;
 - (c) are exclusive of VAT, which shall be added to the Supplier's invoice(s) at the appropriate rate.

8.5 If, at any time whilst using the Services, the Customer exceeds the Supplier's fair usage limit of 1 terabyte of data storage, the Supplier shall charge the Customer and the Customer shall pay the Supplier's then current excess data storage fees for so long as the Customer Data storage exceeds this amount. The Supplier's excess data storage fees current as at the Effective Date are set out in Schedule 1.

8.6 The Supplier shall be entitled to increase the Licence Fees, the fees payable in respect of the additional User Licences purchased pursuant to clause 3.3 and/or the excess storage fees payable pursuant to clause 8.5 at the start of each Renewal Period upon 90 days' prior notice to the Customer and Schedule 1 shall be deemed to have been amended accordingly.

9. PROPRIETARY RIGHTS

9.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

9.2 The Supplier confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

10. CONFIDENTIALITY

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

- (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;
- (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or
- (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

10.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.

- 10.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 10.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 10.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.
- 10.6 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.
- 10.7 This clause 10 shall survive termination of this Agreement, however arising.

11. INDEMNITY

- 11.1 The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation, provided that:
 - (a) the Customer is given prompt notice of any such claim;
 - (b) the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
 - (c) the Customer is given sole authority to defend or settle the claim.
- 11.2 The Supplier shall, subject to clause 11.4, defend the Customer, its officers, directors and employees against any claim that the Services or Documentation infringes any United Kingdom patent effective as of the Effective Date, copyright, trademark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
 - (a) the Supplier is given prompt notice of any such claim;
 - (b) the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
 - (c) the Supplier is given sole authority to defend or settle the claim.
- 11.3 In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs, howsoever accrued or incurred to the Customer.
- 11.4 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 or Documentation by anyone other than the Supplier;
or
 - (b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by the Supplier; or
 - (c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.
- 11.5 The foregoing states the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.
- 12. LIMITATION OF LIABILITY**
- 12.1 Subject to the provisions of clause 11 this clause 12 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- (a) any breach of this Agreement;
 - (b) any use made by the Customer of the Services and Documentation or any part of them; and
 - (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 12.2 Except as expressly and specifically provided in this Agreement:
- (a) the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction;
 - (b) 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
 - (c) the Services and the Documentation are provided to the Customer on an "as is" basis.
- 12.3 Nothing in this Agreement 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.
- 12.4 Subject to clause 12.2 and clause 12.3:
- (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 Licence Fees paid for the User Licences during the 3 month period immediately preceding the date on which the claim arose.

13. TERM AND TERMINATION

13.1 This Agreement shall, unless otherwise terminated as provided in this clause 13, commence on the Effective Date and shall continue for the Initial Licence Term and, thereafter, this Agreement shall be automatically renewed for successive periods of 12 months (each a **Renewal Period**), unless:

- (a) either party notifies the other party of termination, in writing, at least 60 days before the end of the Initial Licence Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Licence Term or Renewal Period; or
- (b) otherwise terminated in accordance with the provisions of this Agreement;

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

13.2 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this Agreement without liability to the other if:

- (a) the other party commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- (b) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party; or
- (c) 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 to the Insolvency Act 1986); or
- (d) a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or
- (e) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or

- (f) the other party ceases, or threatens to cease, to trade; or
- (g) there is a change of control of the other party; or
- (h) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

13.3 On termination of this Agreement for any reason:

- (a) all licences granted under this Agreement shall immediately terminate;
- (b) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- (c) the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than ten 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, irrespective of any reason for termination; and
- (d) the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.
- (e) If the Customer has elected to pay for his Annual User Licences on a Monthly basis, such payments must be made monthly in advance. Should the Customer for any reason, including failure in performance terminate the Agreement then all payments due for the remaining period of the Minimum term of 1 year of the Agreement from the date of its commencement for Services Supplied shall become immediately payable to the Supplier.

14. FORCE MAJEURE

The Supplier shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, terrorism, 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 where reasonably practicable of such an event and its expected duration.

15. WAIVER

- 15.1 A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.
- 15.2 Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

16. SEVERANCE

- 16.1 If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 16.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

17. ENTIRE AGREEMENT

- 17.1 This Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 17.2 Each of the parties 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.

18. ASSIGNMENT

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

19. NO PARTNERSHIP OR AGENCY

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

20. THIRD PARTY RIGHTS

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

21. NOTICES

21.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its registered address set out in this Agreement, or such other address as may have been notified by that party for such purposes, or sent by fax or email to the following addresses:

- (i) Fax address: 0872 110 8348
- (ii) Email address: info@solearn.com

21.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

21.3 A notice sent by fax shall be deemed to have been received at the time of successful transmission (as shown by the timed printout obtained by the sender) provided that if deemed receipt occurs before 9am on a Business Day the notice shall be deemed to have been received at 9am on that day and if deemed receipt occurs after 5pm on a Business Day, or on a day which is not a Business Day, the notice or demand shall be deemed to have been received at 9am on the next Business Day.

21.4 A notice sent by email shall not be effective unless the addressee acknowledges receipt of such communication, such acknowledgement to take the form of either an automated receipt or a reply e-mail confirming receipt.

22. GOVERNING LAW AND JURISDICTION

22.1 This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of England.

22.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.

Signed by _____

Name []

Position

for and on behalf of SOLEARN LTD

Signed by _____

Name []

Position

for and on behalf of [CUSTOMER]

Schedule 1 Licence Fees

1. LICENCE FEES

The Licence Fees shall amount to a total of £[AMOUNT], based on [NUMBER] User Licences at £[AMOUNT] per User Licence.

2. ADDITIONAL USER LICENCE FEES

Additional User Licences may be purchased by the Customer in accordance with clause 3 at £[AMOUNT] per User Licence.

3. EXCESS STORAGE FEES

The Supplier's excess storage fees current as at the Effective Date are set out below:

£2.50 + VAT per additional gigabyte per month or part month, billed monthly in arrears.

4. AUTHORISED SUBSIDIARY OR ANCILLARY COMPANIES

Additional User Licences may be purchased by the Customer in accordance with clause 3 at £[AMOUNT] per User Licence.

Schedule 2
Service Level Agreement
soLearn™ Hosted Services

1. ACCESS TO SERVICES

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 the maintenance window of 18:00 and 06:00 UK time on 1st Monday of the month; 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.

2. HELPDESK SUPPORT SERVICES

The Supplier shall make available a telephone based helpdesk support service during Normal Business Hours on the telephone number as set out in the Documentation or as otherwise advised for the purposes from time to time.

Queries and faults registered through the online helpdesk support will be responded to within 8 Normal Business Hours.

No guarantee is given by the Supplier for resolution of any query or fault registered however the Supplier will use all reasonable endeavours to provide the Customer with a timely resolution or workaround.

3. BACK-UP PROCEDURE

Standard Service – included in per User Licence fees:

Daily back-up to Local Network Attached Storage Device or NAS Drive at soVision Data Centre.

Silver Service - £252.68 per month or £3,032.22 per year:

Daily back-up to soVision 360DR Cluster, RAID (Redundant Array of Independent Disks) Protected Storage with back-up to 4 geographically displaced data centres.

Gold Service – £416.66 per month or £5,000.00 per year:

Daily back-up to soVision 360DR Cluster, RAID (Redundant Array of Independent Disks) Protected Storage with back-up to 4 geographically displaced data centres and also back-up to soVision local Data Centre.