

# Clifton EMAG Ltd – Data Sharing / Service Level Agreement

**PLEASE READ CAREFULLY BEFORE USING THE SERVICES PROVIDED BY CLIFTON EMAG LTD INCLUDING (WITHOUT LIMITATION) DOWNLOADING ANY DATA FROM EAZ MAG WRITER:**

This agreement is a legal agreement between you and **Clifton EMAG Ltd** who are incorporated and registered in England and Wales with company number 07569772 and whose registered office is at Zone 1, Erskine Road, Eastwood, Rotherham, S65 1RF for the use of the EAZ MAG Writer system as defined below in this Licence.

We shall provide Services (as defined below in this agreement) to you and license the use of the EAZ MAG Writer system and the Materials to you on the basis of this Licence (as defined below in this agreement). We do not sell the EAZ MAG Writer system or Materials to you. We remain the owners of the EAZ MAG Writer system and Materials at all times. Such Licence is granted and such services are provided only on the basis of you paying the Subscription Fee (as defined below).

**OPERATING SYSTEM REQUIREMENTS:** THIS SOFTWARE REQUIRES A COMPUTER OR TABLET WITH MICROSOFT WINDOWS (COMPUTER), APPLE OSX (COMPUTER), APPLE IOS (TABLET) OR ANDROID (TABLET). THE SOFTWARE REQUIRES THE COMPUTER OR TABLET TO BE CONNECTED TO THE INTERNET AND RUNNING AN INDUSTRY STANDARD WEB BROWSER (INTERNET EXPLORER v11 OR ABOVE, CHROME, SAFARI OR FIREFOX).

## **IMPORTANT NOTICE TO ALL USERS:**

\* BY LOGGING ONTO THE EAZ MAG WRITER SYSTEM OR BY CONFIRMING THE CONTRACT / AGREEMENT (when first subscribing / renewing / refreshing the agreement) YOU AGREE TO THE TERMS OF THIS AGREEMENT WHICH WILL BIND YOU AND YOUR EMPLOYEES. THE TERMS OF THIS AGREEMENT INCLUDE, IN PARTICULAR, LIMITATIONS ON LIABILITY IN CONDITION 17.

\* IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, WE WILL NOT PROVIDE THE SERVICES AND OR LICENSE THE LICENCED DATA AND MATERIALS TO YOU AND YOU MUST DISCONTINUE ACCESSING THE EAZ MAG WRITER SYSTEM. IN THIS CASE YOU MAY NOT USE THE EAZ MAG WRITER SYSTEM, DOWNLOAD ANY LICENSED DATA OR USE ANY MATERIALS FROM THIS WEBSITE.

## **AGREED TERMS**

### **1. INTERPRETATION**

1.1 The definitions and rules of interpretation in this clause apply in this agreement and in any other agreement between the parties.

**Accounting Period:** the 12-month period commencing on the Commencement Date, each subsequent 12-month period and the final period commencing on the date following the end of the last complete 12-month period before the date of termination of this agreement and ending on the date of termination.

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

**Commencement Date:** the date of acceptance of these terms.

**Confidential Information:** all confidential information (however recorded or preserved) disclosed by a party or its employees, officers, representatives, advisers or subcontractors involved in the provision or receipt of the Services who need to know the confidential information in question (**Representatives**) to the other party and that party's Representatives in connection with this agreement, which is either labelled as such or else which should reasonably be considered as confidential because of its nature and the manner of its disclosure. For clarity, Confidential Information does not include any DfE Data and or School Data.

**Data:** the data or information, in whatever form including images, still and moving, and sound recordings, the provision of which comprises the Services (wholly or in part).

**Derived Data:** any EAZ MAG Writer Data (wholly or in part) manipulated to such a degree that it:

- (a) cannot be identified as originating or deriving directly from the EAZ MAG Writer Data or the Services and cannot be reverse-engineered such that it can be so identified; and
- (b) is not capable of use substantially as a substitute for the EAZ MAG Writer Data or the Services.

**DfE Data:** the statistical data (including LA Data) comprised in EAZ MAG Writer Data from time to time.

**Distribute:** to make Data accessible (including the provision of access through a database or other application populated with the Data, re-selling, sub-licensing, transferring or disclosing the Data) by any means, including any electronic means, to any School User.

**EAZ MAG Writer Data:** the Data in the EAZ MAG Writer system, including DfE Data, LA Data and the School Data.

**EAZ MAG Writer:** the EAZ MAG Writer system providing access to the EAZ MAG Writer Data.

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, semi-conductor topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Licence:** the Licence granted in clause 12.

**Manipulate:** to combine or aggregate the EAZ MAG Writer Data (wholly or in part) with other data or information or to adapt the EAZ MAG Writer Data (wholly or in part).

**Manipulated Data:** any EAZ MAG Writer Data that has been manipulated. Manipulated Data includes any Derived Data.

**Materials:** any hardware or documents supplied by Clifton EMAG Ltd under this agreement, including the materials referred to in clause 7.4.

**Normal Business Hours:** 9.00 am to 5.00 pm GMT on a Business Day.

**DP Requirements:** the Data Protection Act 1998, the General Data Protection Regulation (95/46/EC), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or other relevant supervisory authority, and the equivalent of any of the foregoing in any relevant jurisdiction (whether mandatory or not).

**Permitted Use:** the use of the EAZ MAG Writer system and the Materials by the School User for educational purposes, including (without limitation), the purpose of improving both pupil outcomes and school performance but specifically excluding the use of the EAZ MAG Writer Data and EAZ MAG Writer system for commercial purposes, including (without limitation) the:

- sale and or transfer to a third party of, for consideration (of any amount), the EAZ MAG Writer Data and or the Materials;
- the licensing to a third party of, for consideration (of any amount), the EAZ MAG Writer Data and or the Materials.

**School Data:** any Data uploaded to the EAZ MAG Writer system by School Users.

**School User:** any user whose duties are primarily based in the school to which they are granted access to EAZ MAG Writer data using his own unique identifier provided by Clifton EMAG Ltd via a School subscription.

**Security Breach:** any security breach relating to:

- (a) EAZ MAG Writer data reasonably determined by Clifton EMAG Ltd to be sufficiently serious or substantial to justify notification to the Information Commissioner in accordance with the DP Requirements; or
- (b) the EAZ MAG Writer Data reasonably determined by Clifton EMAG Ltd to be sufficiently serious or substantial to give rise to a material risk of litigation by the individuals whose EAZ MAG Writer Data is the subject of the breach.

**Security Feature:** any security feature including any key, PIN, password, token or smartcard.

**Services:** the services to be supplied by Clifton EMAG Ltd under this agreement as described in Part 1 of Schedule 1 including access to the EAZ MAG Writer system, Materials or Support.

**Subscribed Organisation:** The organisation holding and agreeing the subscription and the organisation whose employees are accessing the EAZ MAG Writer service.

**Subscription Fee:** the fee paid by the Subscribed Organisation to Clifton EMAG Ltd in consideration of Clifton EMAG Ltd providing the Subscribed Organisation Services.

**Support:** the support to be supplied by Clifton EMAG Ltd including reasonable efforts to maintain the Materials in good working order and to restore the Services (if unavailable).

**Term:** such period of time as Clifton EMAG Ltd provides the Services to the Subscribed Organisation in consideration of the Subscription Fee but excluding any period of time where Clifton EMAG Ltd have ceased to provide the Services due to the Subscribed Organisation being in breach of its agreement with Clifton EMAG Ltd, whether or not the Subscription Fee has been paid in relation to that period of time.

- 1.2 Data subject, personal data, processing and appropriate technical and organisational measures shall bear the meanings given to those terms respectively in the DP Requirements.
- 1.3 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.4 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.5 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.
- 1.6 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.7 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.8 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.9 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.10 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.11 A reference to **writing** or **written** includes faxes but not e-mail.
- 1.12 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.13 Any words following the terms **including**, **include**, **in particular** or **for example** or any similar phrase shall be construed as illustrative and shall not limit the generality of the related general words.
- 1.14 In the case of conflict or ambiguity between:
  - (a) any provision contained in the body of this agreement and any provision contained in the Schedules or appendices, the provision in the body of this agreement shall take precedence; and
  - (b) the terms of any accompanying invoice or other documents annexed to this agreement and any provision contained in the Schedules or appendices, the provision contained in the Schedules or appendices shall take precedence.

## **2. SCOPE**

In consideration of the fulfilment by the Subscribed Organisation of its obligations under these terms Clifton EMAG Ltd shall supply, during the Term, the Services to the Subscribed Organisation.

## **3. CONNECTION**

- 3.1 Clifton EMAG Ltd shall use reasonable efforts to make connection to the Services available on the Commencement Date.

3.2 The Subscribed Organisation shall ensure that it promptly complies with any minimum hardware, web-browser and software configuration requirements specified by Clifton EMAG Ltd for the purpose of establishing connectivity between the Subscribed Organisation System and the Services.

3.3 Each party shall bear its own costs of establishing that connectivity.

#### **4. SERVICES**

4.1 During the Term Clifton EMAG Ltd shall supply the Services to the Subscribing Organisation.

4.2 Clifton EMAG Ltd may change at any time, with as much prior notice to the Subscribing Organisation as is reasonably practicable:

- (a) the content, format or nature of EAZ MAG Writer Data or the Services; and
- (b) the means of access to the EAZ MAG Writer Data or the Services.

4.3 Where an amendment to the provisions of this agreement is required as a result of an addition to the Services or relevant Service (including, for example, an amendment to acknowledge third-party rights), Clifton EMAG Ltd may give the Subscribed Organisation reasonable notice in writing of the necessary amendments that will take effect on the date specified in that notice.

#### **5. INTERNATIONAL TRANSFERS**

Clifton EMAG Ltd shall not transfer the Subscribed Organisation's EAZ MAG Writer Data (nor permit the Subscribed Organisation's EAZ MAG Writer Data to be transferred) outside of the European Economic Area ("EEA") unless it first takes such measures as are necessary to ensure any such transfer is in compliance with DP Requirements.

#### **6. UNAUTHORISED USE**

If any unauthorised use is made of the EAZ MAG Writer Data or Materials and such use is attributable to the act or default of the Subscribed Organisation or a third party that has acquired the EAZ MAG Writer Data or Materials from the Subscribed Organisation (including breach of any Subscribed Organisation's User Restrictions) then, without prejudice to Clifton EMAG Ltd's other rights and remedies, the Subscribed Organisation shall immediately be liable to pay Clifton EMAG Ltd an amount equal to the relevant additional Subscription Fee.

#### **7. CONFIDENTIALITY**

7.1 The term Confidential Information does not include any information that:

- (a) is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause 7);
- (b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
- (c) was, is, or becomes, available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;
- (d) was known to the receiving party before the information was disclosed to it by the disclosing party; or
- (e) the parties agree in writing is not confidential or may be disclosed.

7.2 Each party shall keep the other party's Confidential Information confidential and shall not:

- (a) use any Confidential Information except for the Permitted Use; or
- (b) disclose any Confidential Information in whole or in part to any third party, except as expressly permitted by this clause.

7.3 A party may disclose the other party's Confidential Information to those of its Representatives who need to know that Confidential Information for the Permitted Use, provided that:

- (a) it informs those Representatives of the confidential nature of the Confidential Information before disclosure; and

- (b) at all times, it is responsible for the Representatives' compliance with the confidentiality obligations set out in this clause 7.
- 7.4 The Subscribed Organisation acknowledges that Clifton EMAG Ltd's Confidential Information includes any Materials.
- 7.5 A party may disclose Confidential Information to the extent required 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 the disclosure as possible.
- 7.6 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information, other than those expressly stated in this agreement, are granted to or imposed on the other party, or are to be implied from this agreement.
- 7.7 The provisions of this clause 7 shall continue to apply after termination of this agreement.

## **8. ANNOUNCEMENTS**

No party shall make, or permit any person to make, any public announcement concerning this 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 any relevant securities exchange), any court or other authority of competent jurisdiction.

## **9. SECURITY AND PASSWORDS**

- 9.1 The Subscribed Organisation shall ensure that the EAZ MAG Writer Data and Materials are kept secure by using the Security Features and in an encrypted form, and shall use the best available security practices and systems applicable to the use of the EAZ MAG Writer Data and Materials to prevent, and take prompt and proper remedial action against, unauthorised access, copying, modification, storage, reproduction, display or distribution of the EAZ MAG Writer Data and the Materials.
- 9.2 Where Clifton EMAG Ltd uses Security Features in relation to the Services (wholly or in part), the Security Features must, unless Clifton EMAG Ltd notifies the Subscribed Organisation otherwise, be kept confidential and not lent, shared, transferred or otherwise misused.
- 9.3 If the Subscribed Organisation becomes aware of any misuse of the EAZ MAG Writer Data or the Materials, or any Security Breach in connection with this agreement that could compromise the security or integrity of the EAZ MAG Writer Data or the Materials or otherwise adversely affect Clifton EMAG Ltd or if the Subscribed Organisation learns or suspects that any Security Feature has been revealed to or obtained by any unauthorised person, the Subscribed Organisation shall, at the Subscribed Organisation's expense, promptly notify Clifton EMAG Ltd and fully co-operate with Clifton EMAG Ltd to remedy the issue as soon as reasonably practicable.
- 9.4 If Clifton EMAG Ltd believes or becomes aware that its processing of the data is likely to result in a high risk to the data protection rights and freedoms of data subjects, it shall promptly inform the Subscribed Organisation and provide the Subscribed Organisation with all such reasonable and timely assistance as the Subscribed Organisation may require in order to conduct a data protection impact assessment and, if necessary, consult with its relevant data protection authority.
- 9.5 The Subscribed Organisation agrees to co-operate with Clifton EMAG Ltd's reasonable security investigations.
- 9.6 Immediately following any Security Breach, the parties shall coordinate with each other to investigate the Security Breach. The Subscribed Organisation agrees to reasonably co-operate with Clifton EMAG Ltd in Clifton EMAG Ltd's handling of the matter, including:
  - (a) assisting with any investigation;
  - (b) providing Clifton EMAG Ltd with physical access to any facilities and operations affected;
  - (c) facilitating interviews with the Subscribed Organisation's employees, former employees and others involved in the matter; and
  - (d) making available all relevant records, logs, files, data reporting and other materials required to comply with all DP Requirements or as otherwise required by Clifton EMAG Ltd.

- 9.7 Clifton EMAG Ltd's obligations under clause 9.5 and clause 9.6 shall be performed at the Subscribed Organisation's reasonable expense, except to the extent that the Security Breach arose out of any negligence or wilful default of Clifton EMAG Ltd.
- 9.8 Clifton EMAG Ltd may change Security Features on notice to the Subscribed Organisation or the Subscribed Organisation Users for security reasons.
- 9.9 The Subscribed Organisation shall take reasonable precautions to preserve the integrity of any EAZ MAG Writer Data processed by it and to prevent any corruption or loss of such EAZ MAG Writer Data.

## **10. SUBSCRIBED ORGANISATION'S OBLIGATIONS**

### **10.1 The Subscribed Organisation shall:**

- (a) only make copies of the EAZ MAG Writer Data to the extent reasonably necessary for the Permitted Use (which, for clarity, includes back-up, mirroring (and similar availability enhancement techniques), security, disaster recovery and testing of the EAZ MAG Writer Data);
- (b) not extract, re-utilise, use, exploit, redistribute, re-disseminate, copy or store the EAZ MAG Writer Data other than for the Permitted Use;
- (c) not do anything that may materially damage the reputation of Clifton EMAG Ltd;
- (d) not perform the Services in any way contrary to any law or regulation or any regulatory code, guidance or request including any DP Requirements.

### **10.2 The parties acknowledge that:**

- (a) they have agreed that the Subscribed Organisation will respond to enquiries from data subjects and the Information Commissioner concerning processing of the EAZ MAG Writer Data by the Subscribed Organisation; and
- (b) if the Subscribed Organisation is unwilling or unable to respond, clause 10.3 and clause 10.4 shall apply, but otherwise these clauses shall be of no effect.

10.3 If the Subscribed Organisation receives any complaint, notice or communication that relates directly or indirectly to the processing of the EAZ MAG Writer Data or to either party's compliance with the DP Requirements, it shall immediately notify Clifton EMAG Ltd and it shall provide Clifton EMAG Ltd with full co-operation and assistance in relation to any such complaint, notice or communication.

10.4 The Subscribed Organisation shall notify Clifton EMAG Ltd within 2 working days if it receives a request from a data subject for access to that person's EAZ MAG Writer Data and it shall provide Clifton EMAG Ltd with full co-operation and assistance in relation to any such request.

10.5 The Subscribed Organisation shall take reasonable steps to ensure the reliability of all its Subscribed Organisation-Users who have access to the EAZ MAG Writer Data.

10.6 Without limiting the effect of clause 10.5, the Subscribed Organisation shall ensure that all Subscribed Organisation-Users:

- (a) are informed of the confidential nature of the EAZ MAG Writer Data;
- (b) have undertaken training in the laws relating to handling personal data, in particular (but without prejudice to the generality), sufficient training in data protection and security to enable the employee or Subscribed Organisation-User to comply with the DP Requirements; and
- (c) are aware both of the Subscribed Organisation's duties and their personal duties and obligations under such laws and this Licence.

10.7 The Subscribed Organisation shall ensure that access to the EAZ MAG Writer Data and the EAZ MAG Writer system is limited to:

- (a) those Subscribed Organisation-Users who need access to the EAZ MAG Writer Data and the EAZ MAG Writer system for the Permitted Use; and
  - (b) in the case of any access by any employee, such part or parts of the EAZ MAG Writer Data and the EAZ MAG Writer system as is or are strictly necessary for performance of that employee's duties.
- 10.8 The Subscribed Organisation shall notify Clifton EMAG Ltd immediately if it becomes aware of any advance in technology and methods of working that mean that the Subscribed Organisation should revise the security measures set out in or referred to in this Licence.

## **11. Clifton EMAG Ltd'S OBLIGATIONS**

### **11.1 Clifton EMAG Ltd shall:**

- (a) Ensure that, during any Accounting Period, the EAZ MAG Writer system is 99% available during Normal Business Hours, excluding any planned maintenance and loss of internet connectivity between the EAZ MAG Writer system and the Subscribed Organisation.
- (b) Provide support to the Subscribed Organisation by telephone from 9:00am – 5:00pm Monday – Friday (exc Bank Holidays)
- (c) Provide support to the Subscribed Organisation by email from 9:00am – 5:00pm Monday – Friday (exc Bank Holidays)
- (d) Where applicable, provide onsite assistance guaranteed within 5 working days if not resolved via Remote assistance using Remote Desktop.
- (e) Respond to service related incidents and/or requests submitted by the Subscribed Organisation as follows:
  - Within 0-8 hours (during business hours) for issues which can be immediately resolved.
  - On occasions where support issues cannot be resolved immediately, we will endeavor to provide an estimated time of resolution.
  - All emails will be responded to within 24 hours.

Subject always to the occurrence of exceptional circumstances in which these timeframes cannot be met, such as training days, holidays and staff illness.

### **11.2 Notwithstanding the foregoing, Clifton EMAG Ltd:**

- (a) does not warrant that the Subscribed Organisation's use of the Services will be uninterrupted or error-free; or that the Services, EAZ MAG Writer Data, Materials and/or the information obtained by Clifton EMAG Ltd through the Services will meet the Subscribed Organisation's requirements; and
- (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data (whether the EAZ MAG Writer Data or otherwise) over communications networks and facilities, including the internet, and the Subscribed Organisation acknowledges that the Services and the Materials may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

## **12. LICENCE**

### **12.1 Clifton EMAG Ltd grants to the Subscribed Organisation a non-exclusive, non-transferable, revocable, Licence for the Permitted Use only during the Term, subject to the Subscribed Organisation User Restrictions, to:**

- (a) access the EAZ MAG Writer system, view and Manipulate the EAZ MAG Writer Data and create Derived Data;
- (b) store the EAZ MAG Writer Data and Manipulated Data on the Subscribed Organisation System;
- (c) distribute the EAZ MAG Writer Data and Manipulated Data to Subscribed Organisation Users on the Subscribed Organisation's System, where not accessed by school users; and
- (d) use (but not modify) the Materials in support of the activities referred to in this clause 12.1.

12.2 Except as expressly provided in this agreement, the Subscribed Organisation shall not:

- (a) use the EAZ MAG Writer Data or the Materials (wholly or in part) in its products or services; or
- (b) redistribute the EAZ MAG Writer Data or the Materials (wholly or in part).

12.3 The Subscribed Organisation shall observe the Subscribed Organisation's User Restrictions.

### **13. INTELLECTUAL PROPERTY RIGHTS OWNERSHIP**

13.1 The Subscribed Organisation acknowledges that:

- (a) all Intellectual Property Rights in the EAZ MAG Writer Data and the Materials are the property of Clifton EMAG Ltd or its licensors, as the case may be;
- (b) it shall have no rights in or to the EAZ MAG Writer Data or the Materials other than the right to use them in accordance with the express terms of this agreement; and
- (c) Clifton EMAG Ltd or its licensors has or have made and will continue to make substantial investment in the obtaining, verification, selection, co-ordination, development, presentation and supply of the EAZ MAG Writer Data.

13.2 The Subscribed Organisation assigns to Clifton EMAG Ltd, and shall assign to it, with full title guarantee all Intellectual Property Rights in any development of the Materials and in any Manipulated Data it may create, by way of future assignment.

13.3 The Subscribed Organisation shall, and shall use all reasonable endeavours to procure that any necessary third party shall, at Clifton EMAG Ltd's cost, promptly execute such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this agreement.

13.4 The Intellectual Property Rights assigned to Clifton EMAG Ltd under clause 13.2 shall be deemed to be included in the Licence from the date when such rights arise.

13.5 The Subscribed Organisation shall co-operate with Clifton EMAG Ltd to protect the goodwill and reputation of Clifton EMAG Ltd and the Services and shall not use any trademarks and or logos or trading styles of Clifton EMAG Ltd (whether registered or unregistered) in a manner that would damage such goodwill and reputation of Clifton EMAG Ltd and the Services.

13.6 Any display of the Services by the Subscribed Organisation shall credit, wherever technically and commercially feasible, Clifton EMAG Ltd, any licensor of Clifton EMAG Ltd or any other source of the Clifton EMAG Ltd Data specified by Clifton EMAG Ltd as the source of the Clifton EMAG Ltd Data.

13.7 The Subscribed Organisation acknowledges that reference in any element of the Materials to trade names or proprietary products where no specific acknowledgement of such names or products is made does not imply that such names or products may be regarded by the Subscribed Organisation as free for general use, outside the scope of the use of the Materials authorised by this agreement.

### **14. INTELLECTUAL PROPERTY RIGHTS OBLIGATION**

14.1 Clifton EMAG Ltd undertakes to defend the Subscribed Organisation from and against any claim or action that the provision, receipt or use of the EAZ MAG Writer Data or Materials (wholly or in part) infringes any Intellectual Property Right of a third party (**IPR Claim**) and shall be responsible for any losses, damages, costs (including all legal fees) and expenses incurred by or awarded against the Subscribed Organisation as a result of, or in connection with, any such IPR Claim, provided that, if any third party makes an IPR Claim, or notifies an intention to make an IPR Claim against the Subscribed Organisation, the Subscribed Organisation shall:

- (a) give written notice of the IPR Claim to Clifton EMAG Ltd as soon as reasonably practicable;
- (b) not make any admission of liability in relation to the IPR Claim without the prior written consent of Clifton EMAG Ltd;
- (c) at Clifton EMAG Ltd's request and expense, allow Clifton EMAG Ltd to conduct the defence of the IPR Claim including settlement; and



- (d) at Clifton EMAG Ltd's expense, co-operate and assist to a reasonable extent with Clifton EMAG Ltd's defence of the IPR Claim.

14.2 Clause 14.1 shall not apply where the IPR Claim in question is attributable to:

- (a) possession, use, development, modification or retention of the EAZ MAG Writer Data or Materials (wholly or in part) by the Subscribed Organisation other than in accordance with this agreement, provided that the obligations in clause 14.1 shall not apply to the extent that the relevant Claim was attributable to the use of any Manipulated Data;
- (b) the Subscribed Organisation's failure to provide a suitable environment for connecting the Subscribed Organisation's System to the Services in breach of clause 3.2;
- (c) use of the EAZ MAG Writer Data or the Materials (wholly or in part) in combination with any hardware or software not supplied or specified by Clifton EMAG Ltd to the extent that the infringement would have been avoided by the use of the EAZ MAG Writer Data or the Materials (wholly or in part) not so combined;
- (d) use of the EAZ MAG Writer Data (wholly or in part) in combination with any data not supplied or specified by Clifton EMAG Ltd to the extent that the infringement would have been avoided by the use of the EAZ MAG Writer Data (wholly or in part) not so combined.

14.3 If any IPR Claim is made, or in Clifton EMAG Ltd's reasonable opinion is likely to be made, against the Subscribed Organisation, Clifton EMAG Ltd may at its sole option and expense:

- (a) procure for the Subscribed Organisation the right to continue using, developing, modifying or retaining the EAZ MAG Writer Data or the Materials (wholly or in part) in accordance with this agreement;
- (b) modify the EAZ MAG Writer Data or the Materials (wholly or in part) so that they cease to be infringing;
- (c) replace the EAZ MAG Writer Data or the Materials (wholly or in part) with non-infringing items; or
- (d) terminate this agreement immediately by notice in writing to the Subscribed Organisation in accordance with clause 18.

14.4 This clause 14 constitutes the Subscribed Organisation's sole and exclusive remedy and Clifton EMAG Ltd's only liability in respect of Claims and, for the avoidance of doubt, is subject to clause 17.4.

## **15. SUBSCRIBED ORGANISATION DATA**

15.1 The Subscribed Organisation shall own all rights, title and interest in and to all of the Subscribed Organisation's Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Subscribed Organisation's Data.

15.2 Clifton EMAG Ltd shall follow its archiving procedures for the Subscribed Organisation Data as it does with the EAZ MAG Writer Data. In the event of any loss or damage to the Subscribed Organisation Data, the Subscribed Organisation's sole and exclusive remedy shall be for Clifton EMAG Ltd to use reasonable commercial endeavours to restore the lost or damaged Subscribed Organisation Data from the latest back-up of such Subscribed Organisation Data maintained by Clifton EMAG Ltd in accordance with its archiving procedure. Clifton EMAG Ltd shall not be responsible for any loss, destruction, alteration or disclosure of Subscribed Organisation Data caused by any third party (except those third parties sub-contracted by Clifton EMAG Ltd to perform services related to Subscribed Organisation Data maintenance and back-up).

15.3 If Clifton EMAG Ltd processes any personal data on the Subscribed Organisation's behalf when performing its obligations under this agreement, the parties record their intention that the Subscribed Organisation shall be the data controller and Clifton EMAG Ltd shall be a data processor and in any such case:

- (a) the Subscribed Organisation shall ensure that the Subscribed Organisation is entitled to transfer the relevant personal data to Clifton EMAG Ltd so that Clifton EMAG Ltd may lawfully process the personal data in accordance with this agreement on the Subscribed Organisation's behalf;
- (b) Clifton EMAG Ltd shall process the personal data only in accordance with the terms of this agreement and any lawful instructions reasonably given by the Subscribed Organisation from time to time; and
- (c) 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.

## 16. WARRANTIES

- 16.1 Clifton EMAG Ltd warrants that it has the right to license the receipt and use of the EAZ MAG Writer Data and Materials as specified in this agreement.
- 16.2 Except as expressly stated in this agreement, all warranties, conditions and terms, whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by law.
- 16.3 Without limiting the effect of clause 16.2, Clifton EMAG Ltd does not warrant that:
- (a) the supply of the EAZ MAG Writer Data or use of the EAZ MAG Writer system will be free from interruption;
  - (b) the Services will run on the Subscribed Organisation's System;
  - (c) the EAZ MAG Writer Data, and in particular (but without prejudice to the generality) the Subscribed Organisation's Data and DFE Statistical Data supplied is accurate, complete, reliable, secure, useful, fit for purpose or timely; or
  - (d) the EAZ MAG Writer Data has been tested for use by Clifton EMAG Ltd or any third party or that the EAZ MAG Writer Data will be suitable for or be capable of being used by the Subscribed Organisation or any third party.

## 17. LIMITATION OF LIABILITY

- 17.1 Neither party excludes or limits liability to the other party for:
- (a) fraud or fraudulent misrepresentation;
  - (b) death or personal injury caused by negligence;
  - (c) a breach of any terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
  - (d) any matter for which it would be unlawful for the parties to exclude liability.
- 17.2 Subject to clause 17.1, Clifton EMAG Ltd shall not in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:
- (a) any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;
  - (b) loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time);
  - (c) any loss or liability (whether direct or indirect) under or in relation to any other contract; or
  - (d) any loss or corruption (whether direct or indirect) of data or information.
- 17.3 Clause 17.2 shall not prevent claims that fall within the scope of clause 17.4 for:
- (a) direct financial loss that is not excluded under any of the categories set out in clause 17.2(a) to clause 17.2(d); or
  - (b) tangible property or physical damage.
- 17.4 Subject to clause 17.1, Clifton EMAG Ltd's total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement or any collateral contract shall in all circumstances be limited to the Subscription Fee.
- 17.5 The parties will indemnify each other and hold each other harmless from any cost, charge, damages, expense or loss that they cause each other as a result of their breach of any of the provisions of this agreement or the DP Requirements. Indemnification under this agreement is contingent upon:
- (a) the party to be indemnified (**Indemnified Party**) promptly notifying the other party (**Indemnifying Party**) of a claim;

- (b) the Indemnifying Party having sole control of the defence and settlement of any such claim; and
  - (c) the Indemnified Party providing reasonable co-operation and assistance to the Indemnifying Party in defence of such claim.
- 17.6 Any dates quoted for delivery of the Services are approximate only, and the time of delivery is not of the essence. Clifton EMAG Ltd shall not be liable for any delay in delivery of the Services that is caused by an event within the scope of clause 19 or the Subscribed Organisation's failure to provide Clifton EMAG Ltd with adequate delivery instructions or any other instructions that are relevant to the supply of the Services or the Subscribed Organisation's failure to comply with clause 3.2.
- 17.7 Without limiting the effect of the other provisions of this clause 17, if this Agreement is terminated for any reason other than termination by the Subscribed Organisation on the ground of Clifton EMAG Ltd's material breach under clause 18.4(b), Clifton EMAG Ltd shall not be liable:
- (a) to provide the Subscribed Organisation with any EAZ MAG Writer Data or any product, service or solution relating to any EAZ MAG Writer Data; or
  - (b) for the consequences of the inability of the Subscribed Organisation to comply with the terms of any other arrangements that the Subscribed Organisation may have entered into with any third party including any Subscribed Organisation-User.

## **18. TERM AND TERMINATION**

- 18.1 This agreement shall commence on the Commencement Date and shall remain in force for the Term, unless terminated earlier in accordance with clauses 1.1, 18.3 or clause 18.4.
- 18.2 Clifton EMAG Ltd may terminate this Agreement in respect of the Services (wholly or in part) on written notice to the Subscribed Organisation at any time it reasonably determines that the provision of the Services in question has become unlawful, and provided that Clifton EMAG Ltd ceases to provide the Services in question to all subscribers of the Services in question.
- 18.3 The Subscribed Organisation may terminate this agreement in accordance with clause 1.1 and Clifton EMAG Ltd may terminate this agreement in accordance with clause 14.3(d). If the Subscribed Organisation is in breach of any of its obligations for the protection of the EAZ MAG Writer Data under this agreement, then Clifton EMAG Ltd may temporarily suspend the transfer of the EAZ MAG Writer Data to the Subscribed Organisation until the breach is repaired or this agreement is terminated.
- 18.4 Without prejudice to any rights that have accrued under this agreement or any of its rights or remedies, either party may terminate this agreement with immediate effect by giving written notice to the other party if:
- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make that payment;
  - (b) the other party commits a material breach of any material term of this agreement (other than failure to pay any amounts due under this agreement) and (if that breach is remediable) fails to remedy that breach within a period of 90 days after being notified in writing to do so;
  - (c) the other party:
    - (i) suspends, or threatens to suspend, payment of its debts;
    - (ii) is unable to pay its debts as they fall due or admits inability to pay its debts;
    - (iii) (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
    - (iv) (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986; or
    - (v) (being a partnership) has any partner to whom any of clause 18.4(c)(i) to clause 18.4(c)(iv) apply;
  - (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (in the case of a

company) 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;

- (e) 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 (being a company) 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;
- (f) 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 (being a company);
- (g) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (h) 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;
- (i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other similar process is levied or enforced on or sued against, the whole or any part of the other party's assets and that attachment or process is not discharged within 14 days;
- (j) 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 18.4(c) to clause 18.4(i) (inclusive);
- (k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (l) there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010).

18.5 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination of this agreement shall remain in full force and effect.

18.6 Termination of this agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.

18.7 On any termination of this agreement for any reason or expiry of the Term, the Subscribed Organisation shall immediately pay any outstanding amounts owed to Clifton EMAG Ltd under this agreement and, within a reasonable period of termination or expiry, ensure that there is no further use of the EAZ MAG Writer Data or the Materials in any of the Subscribed Organisation's products or applications.

18.8 On any termination of this agreement for any reason or expiry of the Term:

- (a) each party shall as soon as reasonably practicable return or destroy (as directed in writing by the other party) all data, information, software, and other materials provided to it by the other party in connection with this agreement including all materials containing or based on the other party's Confidential Information.
- (b) without limiting the effect of clause 18.8(a), the Subscribed Organisation shall as soon as reasonably practicable ensure that all EAZ MAG Writer Data and Manipulated Data are deleted from the Subscribed Organisation System.
- (c) without limiting the effect of clause 18.8(a), Clifton EMAG Ltd shall retain all EAZ MAG Writer Data and Manipulated Data relating to the Subscribed Organisation's School Data up to and for no longer than 12 months after termination in an effort to assist should the Subscribed Organisation require retrospective access to this data and/or look to renew their subscription within this 12 month retention period.

18.9 If a party is required by any law, regulation, or government or regulatory body to retain any documents or materials that it would otherwise be required to return or destroy under clause 18.8, it shall notify the other party in writing of that retention, giving details of the documents or materials that it must retain. That party shall not be in breach of clause 18.8 with respect to the retained documents or materials, but clause 7 shall continue to apply to them.

## **19. FORCE MAJEURE**

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if that delay or failure results from events, circumstances or causes beyond its reasonable control including without limitation failure of public or private telecommunications networks. In these circumstances the affected party

shall be entitled to a reasonable extension of the time for performing its obligations, provided that, if the period of delay or non-performance continues for eight weeks, the party not affected may terminate this agreement by giving 30 days written notice to the other party.

## **20. ASSIGNMENT**

- 20.1 This agreement is personal to the Subscribed Organisation and it shall not assign, transfer, mortgage, charge, subcontract, declare a trust of or deal in any other manner with any of its rights and obligations under this agreement without the prior written consent of Clifton EMAG Ltd (which is not to be unreasonably withheld or delayed).
- 20.2 The Subscribed Organisation confirms it is acting on its own behalf and not for the benefit of any other person.
- 20.3 Clifton EMAG Ltd may at any time assign, transfer, mortgage, charge, subcontract, declare a trust of or deal in any other manner with any of its rights and obligations under this agreement without the consent of the Subscribed Organisation.

## **21. WAIVER**

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

## **22. REMEDIES**

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

## **23. NOTICE**

- 23.1 Any notice or other communication required to be given to a party under or in connection with this contract shall be in writing and shall be delivered by hand or sent by pre-paid first class post or other next working day delivery service providing proof of postage, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
- 23.2 Any notice or communication shall be deemed to have been received, if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address, or if sent by fax, at 9.00 am on the next Business Day after transmission, or otherwise at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
- 23.3 This clause 23 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, writing shall not include e-mail.

## **24. ENTIRE AGREEMENT**

- 24.1 This agreement constitutes the entire agreement between the parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to its subject matter.
- 24.2 Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this agreement.
- 24.3 No party shall have any claim for innocent or negligent misrepresentation based on any statement in this agreement.

## **25. VARIATION**

Except as expressly provided in this agreement, no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## **26. SEVERANCE**

- 26.1 If any court or competent authority finds that any provision of this agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this agreement shall not be affected.
- 26.2 If any invalid, unenforceable or illegal provision of this agreement would be valid, enforceable and legal if some part of it were deleted, the parties shall negotiate in good faith to amend that provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

## **27. NO PARTNERSHIP OR AGENCY**

Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

## **28. THIRD-PARTY RIGHTS**

- 28.1 A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement, but this does not affect any right or remedy of a third party which exists, or is available, other than in that Act.
- 28.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any person not party to this agreement.

## **29. GOVERNING LAW AND JURISDICTION**

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

## **30. SUBCONTRACTING**

- 30.1 Clifton EMAG Ltd may appoint sub-contractors to carry out any or all of its data processing activities in accordance with the terms of this clause 30.
- 30.2 The Subscribed Organisation hereby authorises Clifton EMAG Ltd to appoint third parties to provide web and app development services to Clifton EMAG Ltd in connection with the EAZ MAG Writer system, and third parties to provide electronic data storage and transmission services to the Clifton EMAG Ltd in connection with the EAZ MAG Writer system.
- 30.3 The Subscribed Organisation hereby authorises the Clifton EMAG Ltd to appoint the sub-contractors listed in Schedule 2 to carry out data processing activities in connection with the EAZ Mag Writer Data. Clifton EMAG Ltd shall use reasonable endeavours to promptly notify the Subscribed Organisation of any changes to the identity of such third parties from time-to-time.
- 30.4 Save as permitted by paragraphs 30.2 and 30.3, Clifton EMAG Ltd shall not appoint any other sub-contractor in connection with the processing of the data without the prior permission of the Subscribed Organisation.
- 30.5 Where the Clifton EMAG Ltd appoints a sub-contractor pursuant to this clause 30, it shall ensure that Clifton EMAG Ltd imposes data protection terms on any sub-contractor it appoints that protect the EAZ MAG Writer Data to the same standard as those provided for in this agreement, and meet the requirements of DP Requirements.
- 30.6 Clifton EMAG Ltd acknowledges that it remains fully liable for the acts, errors or omissions of any of its sub-contractors in respect of the processing of the EAZ MAG Writer Data.

## **31. DELETION OR RETURN OF DATA**

- 31.1. Upon written request by Subscribed Organisation, Clifton EMAG Ltd shall destroy all EAZ MAG Writer Data (including all copies of the EAZ MAG Writer Data) in its possession or control (including any EAZ MAG Writer Data subcontracted to a third party for processing).

31.2. This requirement shall not apply to the extent that Clifton EMAG Ltd is required by any EU (or any EU Member State) law to retain some or all of the EAZ MAG Writer Data, in which event Clifton EMAG Ltd shall isolate and protect the EAZ MAG Writer Data from any further processing except to the extent required by such law.

#### Schedule 1

Data Processing				
Data Subject	Type of Personal Data	Purpose	Retention/Deletion	Location
Pupils	<p><b>Pupil Data</b></p> <ul style="list-style-type: none"> <li>• Basic pupil details such as UPN, forename, surname, date of birth, start date, comments, etc</li> <li>• Current and prior attainment data, targets, estimates, assessments, attitude to learning and attendance</li> <li>• Information on allocation of pupils to pupil sets, groups and classes</li> <li>• Evidence in the form of photos</li> </ul> <p><b>Special Category Pupil Data</b></p> <ul style="list-style-type: none"> <li>• Ethnicity</li> <li>• Contextual information such as if a child is SEND, FSM, PP, etc. This depends on what contextual information the school wishes to use in the system</li> </ul>	Allows Subscribed Organisation to track pupil details and produce reports which filter/group using pupil attributes.	<p>Subscribed Organisation can retain data for as long as it is legitimate to do so.</p> <p>Subscribed Organisation can delete pupil data within the EAZ MAG Writer system as and when required to do so.</p>	All data stored on UK based dedicated storage solution
School Users	<ul style="list-style-type: none"> <li>• Contact details and job title of the users who use the system in schools</li> <li>• Username, Password, Full Name, Role and details of system usage by the user</li> </ul>	<ul style="list-style-type: none"> <li>• To allow school users to access the EAZ MAG Writer system and accompanying services.</li> <li>• To allow Clifton EMAG Ltd support representatives to provide telephone/email support.</li> </ul>	<p>Subscribed Organisation can add, update, disable, enable and delete logins to the EAZ MAG Writer system from within the EAZ MAG Writer system</p> <p>Subscribed Organisation can contact Clifton EMAG Ltd to request to remove or opt-out any school user from Clifton EMAG Ltd's communication systems.</p>	All data stored on UK based dedicated storage solution

#### Schedule 2

Sub Processor / Third Party Processor		
Name	Processing	Location
Fasthosts	Primary infrastructure used to host the EAZ MAG Writer system and the Subscribed Organisation's EAZ MAG Writer Data	United Kingdom
Dropbox	Office documents storage	United States
LiveDrive	Office documents backup storage	United Kingdom