**1. Definitions**

In the Agreement signed by the school, the following words and phrases have the following meanings:

"Agreement” means the SLA Agreement and (where the context permits), the Agreement Summary and these terms and conditions;

“Agreement Summary” means the document attached to the Agreement, which contains, inter alia, details of the Customer and a summary of Pennine Education Ltd agreement with the Customer;

“Remote Support” means an end-to-end connection between either the Users equipment used to access Sims, or an end-to-end connection between the Customers SIMS servers and Pennine Education Ltd.

“Equipment” means the PC(s) and/or network file server(s), together with the operating system software appropriate for the Software, owned or under the control of the Customer upon which the Software is to reside at the Location(s);

“Force Majeure” means any event beyond the reasonable control of Pennine Education Ltd including, without limitation; strikes, labour disputes, acts of God, war, riot, civil commotion, malicious damage, fire, flood and storm;

“Initial Term” means the Initial Term of the Agreement specified in the Agreement Summary;

“Installation Services” means the Installation of Sims software subject to the school holding an appropriate license with Capita to be provided by Pennine Education Ltd

"Main Release" means a new release or version of the Software incorporating mandatory enhancements of the Software released by Capita;

“Resolution” means the time between recording an issue and the issue being acknowledged, recorded and a call incident reference number issued;

“SIMS” means the Schools Information Management System software.

“SIMS Hardware Specification” means as provided by Capita at http://support.capitaes.co.uk to allow the use of SIMS the hardware and software requirements document

“Software” means the object code only format of the versions of the SIMS software modules listed in the Agreement Summary, as may be amended or upgraded from time to time under the school’s Annual Entitlement agreement with Capita and/or any part thereof and unless otherwise agreed, any additional software and services purchased by the Customer subsequent to the date of the Agreement;

“Software Update” means an optional minor enhancement of the Software by Capita;

"System" means the Software supplied by Capita to the Customer under the Agreement

“Term” means the Term of the Agreement specified in the Agreement Summary

“User” means a username and password pair for use by either; a Parent, Student, Teacher or other authorised person working for the Customer or the Customer’s associated organisations, in line with their software licence Agreement;

**2. Agreement**

In consideration of the payment of the charges Pennine Education Ltd agrees to supply to the Customer the Services specified in the Agreement Summary for the Term in accordance with the provisions of the Agreement. The customer must ensure they hold a current Capita license to use the SIMS software modules set out in their Agreement with Capita

The Customer accepts responsibility for the selection of the Software to achieve its intended results.

Unless agreed otherwise, purchase orders received from the Customer, subsequent to the date of the Agreement, for further Services will be construed as being governed by the terms of the Agreement

Pennine Education Ltd shall provide the Customer with such technical advice by telephone, internet access, post, electronic mail or any other means as may be introduced by Pennine Educations Ltd

**Support Services**

“Capita recognises that the Customer may require additional support services and training. Capita offers certain additional services, but recognises that some customers prefer localised support services. Any third party entity providing support services and training for the Software must have its own licence or other arrangement with Capita to provide such services, otherwise such entities would be acting in breach of Capita's copyright in the Software, and the Customer would be in breach of Clause 3 of their Agreement with Capita in granting access to unauthorised entities.”

**Pennine Education Ltd has procured a Sims Support Unit License in accordance with Capita’s requirements**.

**Timetable**

Pennine Education Ltd will use all reasonable endeavours to meet any delivery and/or other dates it has given to the Customer but time shall not be of the essence in relation to such obligations. In the event of any material delay Pennine Education Ltd will inform the Customer thereof as soon as reasonably practicable.

Both parties shall use their reasonable endeavours to comply with their obligations as set out in the Agreement Summary.

If the Customer has reasonable objective cause for dissatisfaction with any part of the Services provided, Pennine Education Ltd will review the work undertaken.

Where installation of the Software is undertaken by the Customer, Pennine Education Ltd shall have no liability or responsibility whatsoever for installation, or the success of installation by the Customer, of the Software.

It is the responsibility of the Customer to ensure that staff and governors at the Location are aware of the terms of the Agreement.

**Charges and Payment Terms**

The charges for the purchasing of Sims Support and the initial period of the agreement (if applicable) shall be that given as detailed in the Agreement Summary. The price for the support shall remain as stated in the Agreement for the term of the Agreement.

Payment is invoiced annually and is due for payment on or before the 1st April of the year in respect of which the Annual next period covered commences. Contracts that are signed for more than one year are subject to an Annual Cost of Living Increase.

Payment of the Charges shall be made by the Customer within 30 days of the date of invoice from Pennine Education Ltd.

Without prejudice to any right of termination, in the event that any payment due under the Agreement is not made on the due date (in the absence of genuine error) Pennine Education Ltd shall (at its discretion) be entitled to charge interest (both before and after any judgement) on a day to day basis upon the overdue amount at 8% (eight per cent) above the base rate from time to time of RBS Plc compounded quarterly. Pennine Education Ltd reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

Where any payment is overdue (in the absence of genuine error) Pennine Education Ltd reserves the right to terminate the Agreement.

Pennine Education Ltd reserves the right to increase the cost of Support subject to giving the Customer at least 90 day's written notice thereof to have effect from the first day of the next annual period.

The parties acknowledge that the charges have been calculated taking into account the recoverability or otherwise of the related input VAT. The parties agree that if a ruling or appellate body decision or change in HMRC practice results in a VAT liability for all or part of the services provided herein that differs from these assumptions, to the extent that Pennine Education Ltd s VAT recovery on costs attributable to the provision of the Services is reduced or improved as a result of the ruling, decision or change in HMRC practise, the charges (exclusive of any VAT) will be increased or reduced (as applicable) with effect from the date that the ruling, decision or change in HMRC practise has effect.

Where a change in VAT liability is to be applied retrospectively, and if requested to do so by the Customer (who will be responsible for reimbursing, on demand, Pennine Education Ltd’s reasonable costs) and (after taking account of any sums potentially payable to HMRC on account of claims to recover VAT input tax) a claim for repayment of overpaid tax will overall result in Pennine Education Ltd recovering a larger sum from HMRC than it is potentially liable to pay HMRC, Pennine Education Ltd shall submit a claim to HMRC for a refund of VAT charged in respect of the relevant services already supplied, less additional VAT due to HMRC as a result of the decrease in Pennine Education Ltd’s input VAT recovery. The amount of VAT refunded to the Customer shall be limited to the amount they receive from HMRC.

Pennine Education Ltd reserves the right to pass on any charges from Capita for any software amendment that is necessary as a result of a legislative change which is not part of the issued Product Development Plan of Capita or is a change requested on a regional basis only or is a change that will require a major rewrite of Capita software.

Where goods are shipped to the Customer then the cost of providing suitable transport, packaging and insurance etc. will be added to the charges stipulated in the Agreement Summary. Where Services are provided at the Location then the cost of providing suitable means of travel, hotel accommodation and subsistence, etc. for Pennine Education Ltd’s staff will be added to the charges stipulated in the Agreement Summary.

Pennine Education Ltd reserves the right to charge for the provision of any additional services required as a result of the failure by the Customer to meet its obligations as set out in the Agreement.

Pennine Education Ltd reserves the right to make additional charges in the event that the geographic boundaries of the Customer change from those in place at the date of contract signature or in the event of any local government reorganisation affecting the Customer. The Customer shall promptly inform Pennine Education Ltd of any such proposed boundary change or reorganisation.

**Termination and Suspension**

Either party may terminate the Agreement by giving at least 90 days prior written notice to the other party, such notice to be effective from the end of either the Initial Term or subsequent Annual renewal period in which notice of termination is given.

Either party may terminate the Agreement in the event that the other party enters into a voluntary arrangement with its creditors or (being an individual) is the subject of a bankruptcy order or (being a partnership, company or other body) enters into any formal proceedings (or anything analogous) for its administration, receivership, winding-up or liquidation (except for the purpose of amalgamation or a solvent reconstruction) or otherwise ceases to trade.

Either party may terminate the Agreement in the event that the other party commits a material breach of the Agreement and, if the breach is capable of remedy, the party in breach fails to remedy the breach in question within fifteen (15) Working Days of receiving written notice from the other party requiring the same. For the avoidance of doubt lateness by Pennine Education Ltd is not a material breach.

Pennine Education Ltd may terminate the Agreement in whole or in part by giving notice in writing to the Customer if the United Kingdom Government announces the repeal of or any changes to any legislation or the withdrawal of proposed legislation in connection with which any part of the System or any Services provided hereunder were designed or intended to assist the Customer in fulfilling its own statutory obligations or those of its clients, such termination to be effective on the date on which such repeal, change or withdrawal takes effect.

Pennine Education Ltd reserves the right to terminate the Agreement if there is any change to the legal capacity or status of the Customer with regard to its role vis-a-vis the Locations, including but not limited to ceasing to exist as an entity in its own right, being subsumed within a larger educational establishment or broken into smaller units, or becoming insolvent or bankrupt as an entity if legislation existing at the time permits such an event to happen to the Customer. Subject to it agreeing with any successor or for schools terms similar to those in the Agreement.

Where the termination of the Agreement by Pennine Education Ltd results from a breach of the Agreement by the Customer, Pennine Education Ltd shall be entitled to retain all the Charges paid by the Customer up to and including the date of termination.

Pennine Education Ltd reserves the right to terminate the Agreement should for any reason Capita withdraw the software or the support of the software made available to the customer.

**Liability**

In no event shall Pennine Education Ltd be liable to the Customer in respect of loss of profits, business, revenue, goodwill or anticipated savings or indirect or consequential loss or damage (whether caused by negligence or otherwise) or the acts or omissions of any third party (whether as a result of negligence or otherwise).

During the Term of the Agreement, Pennine Education Ltd shall maintain in force with a reputable insurance company or companies, public and liability, professional indemnity and employers’ liability insurance and Pennine Education Ltd shall upon written demand produce to the Customer sufficient written evidence of the existence and maintenance of such cover.

The Customer shall indemnify and hold Pennine Education Ltd harmless from any claim caused by or arising from any breach of the Software licence conditions and from any unauthorised modification or misuse of the Software and/or Software Documentation by the Customer, its servants, agents or sub-contractors.

**Warranties**

Pennine Education Ltd warrants that it will at all times supply the Services by appropriately qualified and trained personnel.

Save as expressly specified in the Agreement, all other terms, conditions, warranties, representations, or guarantees which might have effect between the parties or be implied or incorporated into the Agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including, without limitation, the express or implied conditions, warranties or other terms relating to the use of reasonable skill and care, or the performance, satisfactory quality or fitness for purpose of any part of the System or provision of Services.

**Consents**

The Customer shall be solely responsible for and liable in respect of any obligation upon the Customer to obtain any government or other consent or licence for the ownership or use of any part of the System.

**Data Protection**

Each party warrants to the other that it shall, in connection with the Agreement, comply with the provisions of the Data Protection Act 1998 and any modification, consolidation or re-enactment thereof and shall indemnify the other party against any reasonable losses, liabilities and costs which it suffers or incurs as a result of a breach of this Clause.

**Restriction**

Neither party shall at any time prior to or within twelve (12) months of termination or expiry of the Agreement solicit the employment of any person who is employed by the other in the course of providing, assisting or developing the Services, unless first agreed between the parties.

**Force Majeure**

If either party is unable to carry out any of its obligations under the Agreement due to a Force Majeure the Agreement shall remain in effect and both parties' obligations in respect of the matter concerned shall be suspended without liability until the Force Majeure ceases to exist. Either party may terminate the supply of the part of the System or the Services concerned if the Force Majeure cannot be remedied in all material respects within six (6) months of its commencement.

**Confidentiality**

Pennine Education Ltd and the Customer shall use all reasonable endeavours to keep confidential (and ensure that their employees, agents and sub-contractors keep confidential) all information received by them relating to any part of the business and affairs of the other party.

Each party shall notify the other in writing if it becomes aware of any breach of confidentiality and give all reasonable assistance to the other party in pursuing its rights where a breach of confidence occurs.

The Customer will ensure that the terms of this clause are equally applied to the Customer, its servants, agents or sub-contractors.

**Notices**

Any notice to be served under the Agreement shall be in writing and either delivered personally, sent by post to the party to whom the notice is addressed at its address set out in the Agreement or such other address subsequently notified in writing to the other party.

A notice is deemed duly given if delivered personally when left at the recipient's address for service or if sent by first class post, at 10.00 hours on the second Working Day following the recorded day of posting.

**General**

No press or other public statement shall be made in respect of the Agreement without the prior written consent of the other party (consent not to be unreasonably withheld).

No variation of the Agreement shall be binding unless made in writing and signed by a duly authorised officer of each party.

The headings to Clauses in the Agreement are for ease of reference only and shall not be construed otherwise.

The Agreement sets out the entire agreement and understanding between the parties in connection with its subject matter and shall override all previous verbal or written agreements and understandings, save in respect of fraudulent misrepresentation.

The Agreement may be entered into in any number of counterparts each of which shall be deemed to be an original and which together shall comprise the Agreement.

The Agreement shall be binding on and shall continue for the benefit of the successors and permitted assigns (as the case may be) of each of the parties hereto.

All provisions of the Agreement shall so far as they are capable of being performed and observed continue in full force and effect notwithstanding expiry or earlier termination.

No whole or partial failure to exercise and no delay in exercising any right hereunder shall operate as a final waiver thereof unless expressed as such in writing.

The rights and remedies provided in the Agreement are cumulative and not exclusive of any rights or remedies otherwise provided by law.

The parties do not intend any third party to have the right to enforce any provision of the Agreement under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

The Customer agrees to provide Pennine Education Ltd, without charge, (unless specified to the contrary in the Agreement Summary) all computer time, resources, accommodation, skilled staff and telecommunications as reasonably required by Pennine Education Ltd in the provision of the Services.

If any part of the Agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of the provisions shall not be prejudiced.

**Non Solicitation**

During the term of the Agreement and for a period of one (1) year thereafter, each Party shall not seek to solicit or entice away the services, nor attempt the same directly or indirectly, of any employee of the other Party whom they come into contact with by virtue of the Agreement (save for where such employment is as a result of a publicly advertised recruitment campaign) without prior written consent.

**Law and Jurisdiction**

The Agreement shall be governed by and construed in accordance with English law and each party irrevocably submits to the exclusive jurisdiction of the Courts of England