



**EDLOUNGE AND EDCLASS
TERMS AND CONDITIONS**

STEPS FOR COMPLETION

1. Carefully read all terms and conditions
2. Sign and date document below
3. Send signed agreement to EDLounge Office
4. Retain a copy for your information

I have read this Contract and agree to the terms and conditions

Signature)

Name)

For and on behalf of

Name of School of)

Date)

**EDLOUNGE AND EDCLASS
TERMS AND CONDITIONS**

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SCHEDULE 1 & 2 : SERVICES AND PAYMENT

- 1) THE SERVICES WE PROVIDE
 - 2) OUR PAYMENT PROFORMA
-

ADJOINING DOCUMENTS

APPENDIX A

- DFE AND DCSF GUIDANCE ON ATTENDANCE.

APPENDIX B

- EDLOUNGE CUSTOMER SERVICE – OUR GUARANTEED CONTACT SCHEDULE FOR EDCLASS

APPENDIX C

- EDCLASS CHECKLIST
 - THE AGREEMENT SYNOPSIS – THE PARTNERSHIP
-

1 INTERPRETATION

1.1 The following definitions and rules of interpretation apply in these Conditions.

1.2 Definitions

Educational establishment: means the educational establishment trust, multi-educational establishment trust and/or individual school within a multi-educational establishment trust / Pupil Referral unit / LEA who purchases the Services from EDLounge.

Educational establishment Equipment: any equipment, systems, cabling or facilities provided by the Educational establishment and used directly or indirectly in the supply of the Services.

Educational establishment's Representative: the Educational establishment's Representative for the Services appointed in accordance with Clause 4.1.

Checklist: the document titled 'Checklist' provided to the Educational establishment by EDLounge prior to commencement of the Contract. (See Appendix C)

Commencement Date: shall have the meaning given in Clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with Clause 8.

Contract: the contract between EDLounge and the Educational establishment for the supply of the Services in accordance with these Conditions.

Document: includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

DPA: means the Data Protection Act 1998.

EDClass Materials: all Documents, lesson plans, products and materials developed by EDLounge or its agents, subcontractors, consultants and employees in relation to the Services in any form, including computer programs, data, reports and specifications (including drafts).

EDLounge: EDLounge Limited registered in England and Wales with company number 06526961 and registered address Lindrick House 205 Outgane Lane, Dinnington, Sheffield, South Yorkshire, S25 3QY.

EDLounge's Equipment: any equipment, including tools, systems, cabling or facilities, provided by EDLounge or its subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate contract between the parties under which title passes to the Educational establishment.

EDLounge's Representative: EDLounge's Representative for the Services appointed under Clause 5.

EEA: from time to time the European Economic Area as created by The Agreement of the European Economic Area 1992 or any successor or replacement body, association, entity or organisation which has assumed either or both the functions and responsibilities of the European Economic Area;

Environmental Information Regulations: the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations.

Fee: the charge made by EDClass for access to the Services as specified on the Order Form;

Fees Regulations: the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

FOIA: the Freedom of Information Act 2000 and any subordinate legislation (as defined in Section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such Act.

Information: has the meaning given under Section 84 of the Freedom of Information Act 2000.

In-put Material: all Documents, information and materials provided by the Educational establishment relating to the Services, including data, reports and specifications.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order Form: the order form completed by the Educational establishment in writing requesting the EDLounge to provide the services.

Personal Data: personal data (as defined in the GDPR 2018) which is supplied to EDLounge by the Educational establishment or obtained by EDLounge in the course of performing the Services.

Pre-Contract Training: one day's training session at EDLounge's premises by sufficient members of staff to ensure the Educational establishment can meet its obligations under this Contract together with such follow up/on-line training as EDLounge specifies within 14 days of receipt of the Order Form (acting reasonably).

Services: [the services to be provided by EDLounge under these Conditions where the Educational establishment, student and Student related Parties are allowed access to a fully serviced online platform for alternative curriculum provision together with any other services which EDLounge provides or agrees to provide to the Educational establishment.

Support Document: means the document titled 'Checklist Support Document' provided by EDLounge to the Educational establishment or such other support document supplied by EDLounge to the Educational establishment from time to time and which EDLounge specifies should be treated as a Support Document;

Student: a student of the Educational establishment enrolled on the Services and/or using the Services from time to time.

Student Equipment: any equipment owned by a Student and used to access the Services.

Student Related Parties: where the Services are accessed by a Student outside of the Educational establishment's premises, any parent, sibling, carer or guardian of a Student or any

other person able to access the premises from which the Student is accessing the Services.

Request for Information: shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply).

User Responsibilities and Guidelines: means the minimum responsibilities and guidelines for use of the Services and the EDClass Materials as provided by EDLounge to the Educational establishment from time to time.

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

13 In these Conditions:

1.3.1 words importing one gender shall be construed as importing any other gender;

1.3.2 unless expressly stated to the contrary, all references to Clauses, sub-Clauses and Schedules are references to Clauses, sub-Clauses and Schedules of and to these Conditions, and all references to Parts, tables, paragraphs, annexes or appendices within or by reference to a particular Schedule are references to the Parts, tables and paragraphs contained in, and the annexes and appendices to, that Schedule;

1.3.3 save where stated to the contrary, any reference to these Conditions or to any other document shall include any permitted variation, amendment, or supplement to such document;

1.3.4 the Schedules to these Conditions (including any annexes or appendices thereto) are an integral part of these Conditions and reference to these Conditions includes reference thereto and reference to any Schedule includes reference to any annex or appendix thereto;

1.3.5 reference to a statute or statutory instrument includes any amendment, modification, consolidation or re-enactment or replacement of that statute or statutory instrument and any regulations or orders made pursuant to that statute and for the time being in force;

1.3.6 all references to time of day shall be a reference to whatever time of day shall be in force in England and Wales;

1.3.7 the words "herein", "hereto" and "hereunder" refer to these Conditions as a whole and not to the particular Clause, Schedule, Part, Paragraph, annex or appendix in which such word may be used;

1.3.8 any reference to a public organisation other than the Educational establishment and unless expressly stated otherwise shall be deemed to include a reference to any successor (public or otherwise) to such public organisation or any organisation or entity which has taken over the functions or responsibilities of such public organisation;

1.3.9 words importing persons shall be construed as importing a corporate or unincorporated body (whether or not having separate legal personality) and/or a partnership and vice versa;

1.3.10 a reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established;

- 1.3.11 where any party comprises more than one person the obligations and liabilities of that party under these Conditions shall be joint and several obligations and liabilities of those persons;
- 1.3.12 references to "parties" mean the parties to these Conditions and references to a "party" mean one of the parties to these Conditions;
- 1.3.13 headings are for convenience of reference only;
- 1.3.14 reference to "including" and "in particular" shall not be construed restrictively but shall mean "including but not limited to" and "in particular but without prejudice to the generality of the foregoing" respectively;
- 1.3.15 words importing the singular shall be construed as importing the plural and vice versa.

2 COMMENCEMENT AND DURATION

- 21 This Contract is conditional on upon the following:
 - 2.1.1 the Educational establishment of a signing and returning the Checklist to EDLounge;
 - 2.1.2 completion by the Educational establishment of the Pre-Contract Training to EdLounge's satisfaction;
 - 2.1.3 provision of minutes of the meeting of the Educational establishment's board of directors, governors or other responsible governance body at which EDClass is nominated as the alternative curriculum provision;
 - 2.1.4 payment by the Educational establishment of the Fee in accordance with Clause 9.
- 22 The Contract shall come into existence on the date of discharge of all of the conditions set out in Clause 2.1 (the "**Commencement Date**").
- 23 If the conditions in Clause 2.1 have not been satisfied or waived by 5.00 pm on the day preceding the first day of term in which the Services are to be provided, this contract shall cease to have effect and the provisions of Clause 17 shall apply.
- 24 These Conditions apply to the Contract to the exclusion of any other terms that the Educational establishment seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 25 Any quotation given by EDLounge shall not constitute an offer and is only valid for a period of 90 days from its date of issue.
- 26 Any trial period offered free of charge by EDLounge shall not constitute an offer and does not form part of the Contract or have any contractual force.
- 27 The Services supplied under these Conditions shall continue to be supplied for the period specified on the Order Form unless this Contract is terminated in accordance with Clause 13.1. The period may be extended at EDLounge's sole discretion.

3 EDLOUNGE'S OBLIGATIONS

- 3.1 EDLounge shall
 - 3.1.1 provide the Services to the Educational establishment from the Commencement Date;
 - 3.1.2 use reasonable endeavours to provide the Services to the Educational establishment, in accordance with the services in all material respects;

- 3.1.3 use reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Educational establishment's premises and that have been communicated to it under Clause 4.1.5 whilst in attendance at the Educational establishment's premises, provided that it shall not be liable under these Conditions if, as a result of such observation, it is in breach of any of its obligations under these Conditions;
- 3.1.4 monitor use of the Services in accordance with Clause 6 and notify the Educational establishment's Representative of any concerns EDLounge may have in relation to a particular Student as soon as reasonably practicable, having regard to the nature of the concern.

4 EDUCATIONAL ESTABLISHMENT'S OBLIGATIONS

4.1 The Educational establishment shall:

- 4.1.1 co-operate with EDLounge in all matters relating to the Services;
- 4.1.2 comply with the Support Document and the User Responsibilities and Guidelines at all times when accessing the Services;
- 4.1.3 provide, for EDLounge, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Educational establishment's premises, office accommodation, data and other facilities as reasonably required by EDLounge;
- 4.1.4 provide, in a timely manner, such In-put Material and other information as is required for the provision of the Services, as set out in the Support Document, User Responsibilities and Guidelines and/or as notified by EDLounge from time to time, and ensure that it is accurate in all material respects;
- 4.1.5 inform EDLounge of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Educational establishment's premises prior to EDLounge's attendance at any of the Educational establishment's premises;
- 4.1.6 be responsible (at its own cost) for ensuring a Student's welfare and safeguarding of Student's whilst accessing the Services;
- 4.1.7 be responsible (at its own cost) for ensuring any Educational establishment Equipment and/or Student Equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to the relevant standards as set out in the User Responsibilities and Guidelines;
- 4.1.8 obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, the use of In-put Material and the use of the Educational establishment's Equipment and/or Student's Equipment insofar as such licences, consents and legislation relate to the Educational establishment's business, premises, staff, students and equipment, in all cases before the date on which the Services are to start;
- 4.1.9 liaise with EDLounge monthly to discuss the Services and, in particular, usage of EDClass;
- 4.1.10 respond promptly to any communication from EDLounge regarding the Services or use of EDClass;
- 4.1.11 on reasonable notice, meet with EDLounge at the Educational establishment's premises (or

such other location as reasonably specified by EDLounge) to discuss the Services;

- 4.1.12 allow EDLounge access to carry out spot checks in accordance with Clause 6; and
- 4.1.13 ensure there is a point of contact for the Educational establishment available at all times on on a 24 hours, 7 days a week basis and that the relevant details for any such point of contact are provided to EDLounge.

42 The Educational establishment acknowledges and agrees that:

- 4.2.1 the welfare and safeguarding of Students using EDClass and the Services;
- 4.2.2 the suitability and appropriateness of EDClass for any particular Student;
- 4.2.3 the learning ability of any Student using EDClass;

remain the responsibility of the Educational establishment and EDLounge has no responsibility or liability to the Educational establishment or the School in respect of these matters.

43 The Educational establishment acknowledges that EDClass represents alternative curriculum provision on a short term basis only and agrees that Students may only access EDClass for a limited period.

44 The Educational establishment shall ensure that no person other than employees, agents of the Educational establishment, Students and or guardians of Students access EDClass and/or the Services without the prior written permission of EDClass.

45 If EDLounge's performance of its obligations under these Conditions is prevented or delayed by any act or omission of the Educational establishment, its agents, subcontractors, consultants, employees, Students or Student Related Parties, EDLounge shall not be liable for any costs, charges or losses sustained or incurred by the Educational establishment that arise directly or indirectly from such prevention or delay.

46 The Educational establishment shall be liable to pay to EDLounge, on demand, all reasonable costs, charges or losses sustained or incurred by EDLounge (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from the Educational establishment's fraud, negligence, failure to perform or delay in the performance of any of its obligations under these Conditions, subject to EDLounge confirming such costs, charges and losses to the Educational establishment in writing.

5 SAFEGUARDING

5.1 EDLounge shall:

- 5.1.1 ensure that all individuals having contact with Students are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service;
- 5.1.2 monitor the level and validity of the checks under this Clause 5 for each member of staff; and
- 5.1.3 not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to provide the Services or who may otherwise present a risk to Students.

52 Notwithstanding clause 5.1 responsibility for the wellbeing and safeguarding of

Students remains with the Educational establishment at all times and EDLounge shall have no liability to the Educational establishment in relation to safeguarding of Students.

6 MONITORING AND SPOT CHECKS

6.1 EDLounge will monitor the use of the Services including (but not limited to):

6.1.1 Timetable completion;

6.1.2 Pathway completion;

6.1.3 Reports;

6.1.4 Contact and chat logs between EDLounge and the Educational establishment and/or Student;

6.1.5 Visit records;

6.1.6 Educational establishment response to any alert;

6.1.7 Student's work; and

6.1.8 Useage by Students either:

6.1.8.1 under supervision and placed on EDClass; or

6.1.8.2 registered for use.

6.2 EDLounge may at any time carry out spot checks on the usage of the Services by the Educational establishment and/or Students. Such spot checks may include (but not limited to):

6.2.1 accessing and analysing data from the EDClass system;

6.2.2 requesting records relating to use of the Services from the Educational establishment;

6.2.3 requesting information relating to any Student relevant to that Student's use of the Services;

6.2.4 attendance at the Educational establishment's premises on 1 day's notice

7 REPRESENTATIVES

Educational establishment Representative

7.1 The Educational establishment shall appoint the Educational establishment's Representative in accordance with this Clause 5 (Representatives). The Educational establishment's Representative shall exercise the functions and powers of the Educational establishment in relation to the Services.

7.2 The Educational establishment shall provide EDLounge details of the Educational establishment's Representative in writing at the Commencement Date.

7.3 The Educational establishment may by written notice to EDLounge change the Educational establishment's Representative

7.4 Except as previously notified in writing before such act by the Educational establishment to EDLounge, EDLounge and EDLounge's Representative shall be entitled to treat any act of the Educational establishment's Representative as being expressly authorised by the Educational establishment and EDLounge and the EDLounge's Representative shall not be required to determine whether an express authority has in fact been given.

EDLounge's Representative

- 75 EDLounge shall appoint EDLounge's Representative in accordance with this Clause 5 (Representatives). EDLounge's Representative shall have full authority to act on behalf of EDLounge for all purposes of the Contract.
- 76 EDLounge shall provide the Educational establishment details of the Educational establishment's Representative in writing at the Commencement Date.
- 77 The EDLounge may by written notice to the Educational establishment change EDLounge's Representative.
- 78 Except as previously notified in writing before such act by the EDLounge to the Educational establishment, the Educational establishment and the Educational establishment's Representative shall be entitled to treat any act of EDLounge's Representative in connection with the Services as being expressly authorised by EDLounge and the Educational establishment and the Educational establishment's Representative shall not be required to determine whether any express authority has in fact been given.

8 CHANGE

- 8.1 If either party wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other in writing.
- 8.2 If either party requests a change to the scope or execution of the Services, EDLounge shall, within a reasonable time, provide a written estimate to the Educational establishment of:
- 8.2.1 the likely time required to implement the change;
 - 8.2.2 any necessary variations to EDLounge's charges arising from the change;
and
 - 8.2.3 any other impact of the change on the Contract.
- 8.3 If the Educational establishment wishes EDLounge to proceed with the change, EDLounge has no obligation to do so unless and until the parties have agreed the necessary variations to its charges, the Services and any other relevant terms of the Contract to take account of the change and those variations have been recorded in writing between the parties.
- 8.4 Notwithstanding Clause 8.3, EDLounge may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory or regulatory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services.
- 8.5 EDLounge may, from time to time change the Services, provided that such changes do not materially affect the nature or quality of the Services and, where practicable, it will give the Educational establishment at least one half term's notice of any change.
- 8.6 EDLounge may charge for the time it spends assessing a request for change from the Educational establishment on a time and materials basis in accordance with Clause 9.

9 CHARGES AND PAYMENT

- 9.1 In consideration of the provision of the Services by EDLounge, the Educational establishment shall pay the Fee in accordance with Schedule 2 within 14 days of receipt of an invoice.
- 9.2 Without prejudice to any other right or remedy that it may have, if the Educational establishment fails to pay EDLounge on the due date:

- 9.2.1 the Educational establishment shall pay interest on the overdue amount at the rate of 4% per annum above National Westminster Bank Plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Educational establishment shall pay the interest together with the overdue amount; and
- 9.2.2 EDLounge may suspend all Services until payment has been made in full.
- 9.3 All sums payable to EDLounge under these Conditions shall become due immediately on its termination, despite any other provision. This Clause 9.3 is without prejudice to any right to claim for interest under the law, or any such right under these Conditions.
- 9.4 All amounts due from the Educational establishment under these Conditions shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). EDLounge may at any time, without limiting its other rights or remedies, set off any amount owing to by the Educational establishment against any amount payable by EDLounge to the Educational establishment.

10 INTELLECTUAL PROPERTY RIGHTS

- 10.1 As between the Educational establishment and EDLounge, all Intellectual Property Rights and all other rights in the EDClass Materials shall be owned by EDLounge. Subject to Clause 10.2, EDLounge licenses all such rights to the Educational establishment free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Educational establishment to make reasonable use of the Services. If this Contract is terminated, this licence will automatically terminate.
- 10.2 The Educational establishment acknowledges that, where EDLounge does not own any of the EDClass Materials, the Educational establishment's use of rights in the EDClass Materials is conditional on EDLounge obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle EDLounge to license such rights to the Educational establishment.

11 CONFIDENTIALITY AND EDLOUNGE'S PROPERTY

- 11.1 The Educational establishment undertakes that it shall not at any time during these Conditions, and for a period of five years after termination of these Conditions, disclose to any person technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Educational establishment by EDLounge, its employees, agents, consultants or subcontractors [or of any member of the group of companies to which EDLounge belongs and any other confidential information concerning EDLounge's business or its products which the Educational establishment may obtain, except as permitted by Clause 11.2.
- 11.2 The Educational establishment may disclose EDLounge's confidential information:
- 11.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with these Conditions. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this Clause 11; and
- 11.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 11.3 The Educational establishment shall not use EDLounge's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with these Conditions.

11.4 All materials, equipment and tools, drawings, specifications and data supplied by EDLounge to the Educational establishment (including the EDClass Materials and EDLounge's Equipment) shall, at all times, be and remain the exclusive property of EDLounge, but shall be held by the Educational establishment in safe custody at its own risk and maintained and kept in good condition by the Educational establishment until returned to EDLounge, and shall not be disposed of or used other than in accordance with EDLounge's written instructions or authorisation.

12 LIMITATION OF LIABILITY - THE EDUCATIONAL ESTABLISHMENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

12.1 Nothing in these Conditions limits or excludes EDLounge's liability for:

12.1.1 death or personal injury caused by its negligence;

12.1.2 fraud or fraudulent misrepresentation; or

12.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.

12.2 Subject to Clause 12.1, EDLounge shall not be liable to the Educational establishment, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with these Conditions for:

12.2.1 loss of profits;

12.2.2 loss of sales or business;

12.2.3 loss of agreements or contracts;

12.2.4 loss of anticipated savings;

12.2.5 loss of or damage to goodwill;

12.2.6 loss of use or corruption of software, data or information;

12.2.7 any indirect or consequential loss.

12.3 Subject to Clause 12.1 and Clause 12.2, EDLounge's total liability to the Educational establishment, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with these Conditions shall be limited to in respect of all claims (connected or unconnected) in any consecutive 12 (twelve) month period, the equivalent of the total charges paid by the Educational establishment in that period.

12.4 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from these Conditions.

13 DATA PROTECTION

13.1 In relation to all Personal Data EDLounge shall, at all times, comply with GDPR as a data controller if necessary including maintaining a valid and up to date registration or notification under the GDPR covering the data processing to be performed in connection with the Services.

13.2 EDLounge shall only undertake processing of Personal Data reasonably required in connection with the Services and shall not transfer any Personal Data to any country or territory outside the EEA.

13.3 EDLounge shall not disclose Personal Data to any third parties other than:

- 13.3.1 to employees and sub-contractors to whom such disclosure is reasonably necessary in order for EDLounge to carry out the Services; or
- 13.3.2 to the extent required by any regulator of EDLounge; or
- 13.3.3 to the extent required under a court order,

provided that disclosure under Clause 13.3.1 is made subject to written terms substantially the same as, and no less stringent than, the terms contained in Clause 13.1 and that EDLounge shall give notice in writing to the Educational establishment of any disclosure of Personal Data it is required to make under Clause 13.3.2 or 13.3.3 immediately it is aware of such a requirement.

- 134 EDLounge shall bring into effect and maintain all technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data.
- 135 The Educational establishment may, at reasonable intervals, request a written description of the technical and organisational methods employed by EDLounge referred to in Clause 13.4. Within thirty (30) days of such a request, EDLounge shall supply written particulars of all such measures with sufficient detail for the Educational establishment to determine whether or not, in connection with the Personal Data it is compliant with the GDPR.
- 136 Subject to the provisions of Clause 12 (Limitation of Liability), the Educational establishment shall indemnify and keep indemnified the Educational establishment against all losses claims, damages, liabilities, costs and expenses (including reasonable legal costs) incurred by it in respect of any breach of this Clause 13 by EDLounge.

14 FREEDOM OF INFORMATION

- 14.1 The parties acknowledge that both parties are subject to the requirements of the FOIA and the Environmental Information Regulations and each party shall facilitate the other's compliance with its Information disclosure requirements pursuant to the same in the manner provided for in Clauses 14.2 to 14.7 (inclusive) below.
- 14.2 Where a party receives (the "**Receiving Party**") a Request for Information in relation to Information that the other party is holding on its behalf ("**Holding Party**") and which the Receiving Party does not hold itself the Receiving Party shall refer to the Holding Party such Request for Information that it receives as soon as practicable and in any event within five (5) working days of receiving a Request for Information and the Holding Party shall:
 - 14.2.1 provide the Receiving Party with a copy of all such Information in the form that the Receiving Party requires as soon as practicable and in any event within ten (28) working days (or such other period as the Receiving Party acting reasonably may specify) of the Receiving Party's request; and
 - 14.2.2 provide all necessary assistance as reasonably requested by the Receiving Party in connection with any such Information, to enable the Receiving Party to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- 14.3 Following notification under Clause 14.2, and up until such time as the Holding Party has provided the Receiving Party with all the Information specified in Clause 14.2.1, the Holding Party may make representations to the Receiving Party as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Receiving Party shall be responsible for determining at its absolute discretion:

- 14.3.1 whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and
- 14.3.2 whether Information is to be disclosed in response to a Request for Information,
- 14.4 Each party shall ensure that all Information held on as a result of or in connection with the Services is retained for disclosure for seven years (safeguarding issues only) and shall permit the other party to inspect such Information as requested from time to time. N.B LAC students are an exemption and when informed data will be kept securely for 75 years.
- 14.5 Each party shall notify the other of any Request for Information received in relation to the Services as soon as practicable and in any event within 2 working days of receiving it.
- 14.6 In the event of a request from the Receiving Party pursuant to Clause 14.2 above, the Holding Party shall as soon as practicable, and in any event within 5 working days of receipt of such request, inform the Receiving Party of the Holding Party's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Receiving Party under Section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the Receiving Party's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in Section 12(1) of the FOIA and as set out in the Fees Regulations (the "**Appropriate Limit**") the Receiving Party shall inform the Holding Party in writing whether or not it still requires the Holding Party to comply with the request and where it does require the Holding Party to comply with the request the 10 working days period for compliance shall be extended by such number of additional days for compliance as the Receiving Party is entitled to under Section 10 of the FOIA. In such case, the Receiving Party shall notify the Holding Party of such additional days as soon as practicable after becoming aware of them and shall reimburse the Holding Party for such costs as the Holding Party incurs in complying with the request to the extent it is itself entitled to reimbursement of such costs in accordance with its own FOIA policy from time to time.
- 14.7 The Holding Party acknowledges that the Receiving Party may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the FOIA (the "**Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose Information concerning the Holding Party or the Project:

14.7.1 in certain circumstances without consulting with the Holding Party; or

14.7.2 following consultation with the Holding Party and having taken their views into account,

provided always that where Clause 14.7.1 above applies the Receiving Party shall, in accordance with the recommendations of the Code, draw this to the attention of the Holding Party prior to any disclosure.

15 PUBLIC RELATIONS AND PUBLICITY

- 15.1 The Educational establishment shall not by itself, its employees or agents and shall procure that its sub-contractors shall not, communicate with representatives of the press, television, radio or other communications media on any matter concerning the Services and/or EDLounge without the prior written approval of EDLounge.
- 15.2 No permission to photograph or film any EDClass Materials or any use of the Services shall be given unless EDLounge has given its prior written approval.

16 TERMINATION

- 16.1 Without affecting any other right or remedy available to it, EDLounge may terminate these Conditions with immediate effect by giving written notice to the Educational establishment if the Educational establishment:
- 16.1.1 fails to pay any amount due under these Conditions on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment; or
 - 16.1.2 commits a material breach of any other term of these Conditions which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so; or
 - 16.1.3 repeatedly breaches any of the terms of these Conditions in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of these Conditions; or
 - 16.1.4 Allowing access to EDClass or any of the Services to any person other than employees, agents of the Educational establishment, Students and or guardians of Students access EDClass and/or the Services without the prior written permission of EDClass;
- 16.2 Without affecting any other right or remedy available to it, the Educational establishment may terminate these Conditions with immediate effect by giving written notice to the EDLounge if EDLounge:
- 16.2.1 fails to pay any amount due under these Conditions on the due date for payment and remains in default not less than 20 days after being notified in writing to make such payment; or
 - 16.2.2 commits a material breach of any other term of these Conditions which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 20 days after being notified in writing to do so.
- 16.3 Without affecting any other right or remedy available to it, either party may terminate these Conditions with immediate effect by giving written notice to the other party if:
- 16.3.1 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 OR (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 (being a partnership) has any partner to whom any of the foregoing apply; or
 - 16.3.2 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 any of its creditors [other than (being 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; or
 - 16.3.3 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; or

- 16.3.4 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); or
- 16.3.5 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; or
- 16.3.6 a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party; or
- 16.3.7 the other party (being an individual) is the subject of a bankruptcy petition or order; or
- 16.3.8 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days; or
- 16.3.9 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 16.3.1 to Clause 16.3.8 (inclusive); or
- 16.3.10 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

17 CONSEQUENCES OF TERMINATION

- 17.1 On termination or expiry of these Conditions:
 - 17.1.1 the Educational establishment shall immediately pay to EDLounge all of EDLounge's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, EDLounge may submit an invoice, which shall be payable immediately on receipt;
 - 17.1.2 the Educational establishment shall return all of EDLounge's Equipment and EDClass Materials which are held at the Educational establishment's premises, a Student's premises and/or on any Educational establishment Equipment or Student Equipment. If the Educational establishment fails to do so, then EDLounge may enter the Educational establishment's premises and take possession of them. Until they have been returned or repossessed, the Educational establishment shall be solely responsible for their safe keeping;
 - 17.1.3 EDLounge will suspend with immediate effect the Educational establishment's EDClass System account and the Educational establishment will remove the Services from Educational establishment Equipment and procure its removal from any Student Equipment.
 - 17.1.4 the following Clauses shall continue in force: Clause 5.2, Clause 4.2, Clause 9.2, Clause 10 (Intellectual Property Rights), Clause 11 (Confidentiality and EDLounge's property), Clause 12 (Limitation of liability), Clause 13 (Data Protection), Clause 14 (Freedom of Information), Clause 15 (Public Relations and Publicity), Clause 17 (Consequences of Termination), Clause 23 (Entire Agreement), Clause 27 (Third Party Rights), Clause 28 (Notices), Clause 29 (Dispute resolution), Clause 30 (Governing law and jurisdiction).
- 17.2 Termination or expiry of these Conditions shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination

or expiry, including the right to claim damages in respect of any breach of the Conditions which existed at or before the date of termination or expiry.

18 FORCE MAJEURE

18.1 **Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation:

18.1.1 acts of God, flood, drought, earthquake or other natural disaster;

18.1.2 epidemic or pandemic;

18.1.3 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;

18.1.4 nuclear, chemical or biological contamination or sonic boom;

18.1.5 any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;

18.1.6 collapse of buildings, fire, explosion or accident;

18.1.7 any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this Clause, or companies in the same group as that party);

18.1.8 non-performance by suppliers or subcontractors; and

18.1.9 interruption or failure of utility service.

18.2 Provided it has complied with Clause 18.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under these Conditions by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of these Conditions or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

18.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

18.4 The Affected Party shall:

18.4.1 as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Conditions; and

18.4.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

18.5 If the Force Majeure Event prevails for a continuous period of more than 1 term, either party may terminate this Contract by giving 20 days' written notice to all the other party. On the expiry of this notice period, this Contract will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of these Conditions occurring prior to such termination.

19 VARIATION

Subject to Clauses 8, no variation of these Conditions shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

20 WAIVER

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

21 RIGHTS AND REMEDIES

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

22 SEVERANCE

If any provision or part-provision of these Conditions is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause shall not affect the validity and enforceability of the rest of these Conditions.

23 ENTIRE AGREEMENT

23.1 These Conditions constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

23.2 Any samples, drawings, descriptive matter or advertising issued by EDLounge and any descriptions or illustrations contained in EDLounge's catalogues or brochures are issued or published for the sole purpose of given an approximate idea of the Services described in them. They shall not form part of the Contract or Conditions nor shall have any contractual force.

23.3 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Conditions. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these Conditions.

23.4 Nothing in this Clause shall limit or exclude any liability for fraud.

24 CONFLICT

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

25 ASSIGNMENT AND OTHER DEALINGS

25.1 This Contract is personal to the Educational establishment and the Educational establishment shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under these Conditions without the prior written

consent of EDLounge.

- 25.2 EDLounge may at any time assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights under these Conditions, provided that EDLounge gives prior written notice of such dealing to the Educational establishment.

26 NO PARTNERSHIP OR AGENCY

- 26.1 Nothing in these Conditions 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, or authorise any party to make or enter into any commitments for or on behalf of any other party.

- 26.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

27 THIRD PARTY RIGHTS

No one other than a party to this Contract shall have any right to enforce any of its terms pursuant to the Contract (Rights of Third Parties) Act 1999

28 NOTICES

- 28.1 Any notice, notification or other communication under or in connection with the Project Documents shall be in writing and shall be delivered by hand or recorded delivery or sent by prepaid first class post to the relevant parties at their registered address, or to such other address in the United Kingdom as each party may specify by notice in writing to the other

- 28.2 A notice given under or in connection with these Conditions is not valid if sent by email.

29 MULTI-TIERED DISPUTE RESOLUTION PROCEDURE

- 29.1 If a dispute arises out of or in connection with these Conditions or the performance, validity or enforceability of it (**Dispute**) then the parties shall follow the procedure set out in this Clause:

29.1.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the Educational establishment's Representative and EDLounge's Representative shall attempt in good faith to resolve the Dispute;

29.1.2 if the Educational establishment's Representative and EDLounge's Representative are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Headteacher of the Educational establishment (or such other person employed by the Educational establishment in a role of equivalent seniority and notified to EDLounge in writing) and a director of EDLounge who shall attempt in good faith to resolve it; and

29.1.3 if the Headteacher of the Educational establishment (or such other person as notified to EDLounge in accordance with Clause 29.1.2 and the director of EDLounge are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not

later than 30 days after the date of the ADR notice.

292 The commencement of mediation shall not prevent the parties commencing or continuing court or arbitration proceedings in relation to the Dispute.

30 GOVERNING LAW AND JURISDICTION

30.1 Subject to Clause 29, these Conditions 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.

30.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

Schedule 1: Services

The description of our services

EDClass is your alternative provision for students in Isolation, Exclusion, Re-integration or in Inclusion to address and improve behaviour, attendance and achievement for all.

EDClass

The EDClass environment is the “secure and safeguarded online chat” mechanism that allows students to communicate with our teaching staff during school /office hours which helps to address the supervisory role required within the DfE guidance.

The students click a button which notifies the EDLounge teacher who then can respond either through VOIP (Voice Over IP) or live text chat. VOIP can only work if the student has sufficient microphone and speaker capabilities with their chosen device. The teacher can see exactly what lesson and what slide the student is working through and can advise from that point.

All communication is saved, time/ date stamped, and recorded for the school staff to view in the EDLounge teacher environment.

EDClass can only operate safely when the set-up of student accounts is correct and accurate. A student account must consist of an IP address for the internet router supplied by the owners/ place of study ISP (Internet Service Provider), we can then locate where that student is and where they should be logging on from. This allows live data to be fed into the EDLounge system to make sure a student is online, learning on time and at the correct location. Notifications and alerts are sent to nominated email addresses at school. A telephone call is also made to the school by a member of the EDLounge team, making school staff aware that a student is logged in at the correct place or logged on at the correct time.

The school / educational establishment get all aspects of the e-portfolio, lessons, tracking, assessment, management system, learning and elearning reports alongside EDClass.

Services for all : The Partnership

Support

- Students are able to ask and receive help, feedback, comments and direction from our support officers so that all students can progress through EDLounge.
- We offer support and supervision to any individual that is on the system, whether they are on-site or off site and undertaking theory, practical, knowledge or academic lessons.
- Our support and supervision officers offer a thorough and robust safeguarded provision which addresses government legislation for alternative provisions on/off-site for academies.

Safeguarding

- Our expert support officers have an extensive knowledge of the qualifications we offer and put into place an exclusive pre-assessment, assessment and feedback service for the students alongside safe supervision.
- Everything is tracked, recorded and reported.
- The chat is recorded for safeguarding purposes but enables the students to securely ask for help, guidance and assistance

There is total transparency of progress, attendance and behaviour throughout the system for staff, EDLounge, SLT, parents, students and behaviour support to view:

- Messages
- Progress
- Behaviour logs
- Key Dates
- Incidents

- Homework
- Deadlines

Attainment

- All our support officers are uniquely trained to have a wealth of knowledge and understanding of the EDLounge system, including lessons, qualifications, methodology, exams, coursework, and practical elements, enabling the student to continually learn and progress.
- The staff and support team are constantly available for any student.
- We work in partnership with the school to make sure that re-intervention / reintegration and the education of each individual are the keys to progress.

Tracking, Recording and Monitoring

There is a comprehensive breakdown and reports for students, parents, governors and inspectors per student / target groups or year groups in each of the following areas:

- Class work,
- Intervention,
- Isolation,
- Inclusion
- Exclusion
- Off site
- Alternative Provision
- Homework

The Educational establishment must agree:

- That the duty of care remains with the school
- To recognise EDLounge as an official alternative provider
- Suitability of the students learning outside of school on EDClass is the responsibility of the school.
- Learning ability of the student learning outside of school remains the responsibility of the school
- Understand the safeguarding and child protection aspects delivered
- Meet EDLounge on own premises when ever EDLounge needs (with suitable notice)
- To liaise with EDLounge on a monthly basis to discuss usage
- To liaise with EDLounge on a termly basis to discuss staff, parent and student involvement, issues and requirements
- To be responsive

Schedule 2: Payment

Our Payment proforma

Recently your establishment subscribed to our online resource which educates students in a range of subjects in order to raise attendance, behaviour and attainment.

Our terms and conditions stipulate that it is imperative that we take receipt of the goods within 14 days of receipt of invoice.

If a separate agreement has been agreed then the payment terms will be stipulated on the order form.

We would greatly appreciate payment to be sent to us before this date.

Unfortunately due to circumstances we will charge a 4% late payment fee if the payment is not received within the stipulated time.

Below are all of our details for either cheques or BACS payments.

Can you please endeavour to see that the payment is made within the actual stipulated period of time.

Please send the cheques payable to:

Edlounge Ltd
Aston House
Campbell Way
Dinnington,
Sheffield
South Yorkshire
United Kingdom
S25 2LE

BACS details for the EDLounge:

ACCOUNT NAME: EDLOUNGE LTD
BANK: NATWEST
BRANCH: DINNINGTON BRANCH, DINNINGTON, SHEFFIELD, S25 2HA
BANK ACCOUNT: 39062643
SORT CODE: 52 – 30 – 50

We hope these details are suitable and we thank you for your order. Please do not hesitate to contact us on 01909 568 338 or email me on sam@edlounge.com to discuss any issue.

Thanks

Sam Warnes

Managing Director