

Bromcom Computers Plc

STANDARD TERMS AND CONDITIONS

This edition: 3 December 2019

1. DEFINITIONS

"Agreement" means the contract of supply between Bromcom and Customer relating to the Products subject to these conditions.

"Assignee" means a party to which Bromcom may assign its right, title and interest in and to the Products and all payments due under this Agreement which shall include the right to enforce the payment of all sums due under this Agreement.

"Authorised Users" means those users who are authorised by the Customer to use the Bromcom Software.

"Bromcom" means Bromcom Computers Plc.

"Bromcom Partner" means any third party entity providing help desk, support or other services for Software with a current, valid and written arrangement with Bromcom to provide such services.

"Bromcom Software" see "Software"

"Company" means Bromcom Computers Plc.

"Contract Start Date" means the date that Bromcom commits resources to the contract and is the same as the Customer's purchase order date.

"Customer" means the school, academy, dealer, distributor, Value Added Reseller (VAR) or other entity that is party to this contract with Bromcom.

"Customer Equipment" means the hardware and related product owned or controlled by Customer in order to access the Bromcom and Other Software.

"Delivery Date" means the date specified in the Order Acknowledgement for delivery of any Products. This date may be varied from time to time in respect of any Product by Bromcom giving notice to Customer.

"Follow Up Term" means the contract period which follows the Initial Term (or a previous Follow Up term). A Follow Up Term is a 5-year long term which follows the Initial Term (or a previous Follow Up term) unless notice is given by Customer to Bromcom at least 90 days in advance of the end of the Initial Term (or previous Follow Up term). The Follow Up term is on the same conditions as the Initial Term (or previous Follow Up term).

"Help Desk" is the Bromcom Help Desk which provides help and guidance by telephone, broadband, email, or other means to the Customer subscribing to the Help Desk service. Bromcom Help Desk provides help and guidance in the understanding of the Software, in the use of the Software and with any problems experienced in using the Software and such help and guidance includes the examination of and the provision of a solution to any reported problems with the Software.

"Initial Term" means the contract period shown on the Bromcom Quotation sent to the Customer and will be for a 1 year or multiple year contract. At the end of the Initial Term the contract will roll over on the same conditions to a 5-year long term (the Follow Up term), unless notice is given by Customer to Bromcom at least 90 days in advance of the end of the Initial Term to either terminate the contract at the end of the Initial Term or enter into a new contract for one year.

"Installation Date" means the date on which Bromcom certifies to Customer that the Products have passed Bromcom's standard installation tests (for which purpose Bromcom's certificate is final and binding in the absence of fraud or manifest error). Installation for SaaS means the creation of an account by Bromcom on the SaaS infrastructure for the Customer.

"Order Acknowledgement" means Bromcom's Order Acknowledgement acknowledging and accepting a purchase order from a Customer subject to these terms.

"Other Software" means that software supplied by Bromcom, and not created by Bromcom or on its behalf, together with accompanying documentation.

"Product" means any Bromcom Software or Other Software or services (including training and consultancy) provided in accordance with the Agreement.

"SaaS" means Software provided to the Customer as a Service in the form of "Software as a Service". The Software is hosted and maintained by or on behalf of Bromcom and made available for use by the Customer from a Web Site Address that shall be notified to the Customer.

"Site" means the physical location of the Customer as specified in the Order Acknowledgement.

"Software" or "Bromcom Software" means the computer programs created by Bromcom or on its behalf and accompanying documentation specified in the Order Acknowledgement together with any subsequent releases or updates of those programs (contracted for by the Customer) or documentation from time to time licensed by Bromcom to Customers. Software is either supplied with a licence for installation at the Customer Site or supplied with a licence to use as SaaS.

"Warranty Period" means in relation to each item of Bromcom Software the period of 90 days starting on the Delivery Date of any such item to Customer and in relation to any services the date 90 days after their performance.

"Web Site Address" means the Uniform Resource Locator; an Internet address on the World Wide Web.

2. AGREEMENT

2.1 Customer agrees to buy and Bromcom agrees to license the use of the Bromcom Software and/or Other Software and/or provide the Software annual maintenance service and/or help desk and support services in consideration of payment by Customer of the price and other sums including VAT and any other taxes specified in the Order Acknowledgement subject to these terms and conditions. Reference to the provision of help desk and support services and/or other services shall include said provision by a Bromcom Partner where it has been agreed that a Bromcom Partner shall provide said support services.

2.2 Quotations issued by Bromcom do not constitute offers capable of giving rise to a contract by acceptance unless in writing and expressed to be irrevocable for a specified period. Save in the case of acceptance within the specified period of such a quotation no contract will arise between Bromcom and Customer for the Products until the issue by Bromcom of the Order Acknowledgement.

- 2.3 When Other Software is provided the Customer shall execute the Other Software manufacturer's applicable software licence in respect of the Other Software on or before the Delivery Date relating to the same and (where Customer is not buying as end-user), shall procure the execution of such a software licence in respect of the Other Software by the end user to whom the Other Software is to be supplied by Customer on or before the date on which the same is so supplied.
- 2.4 Customer consents to provide information to the lease or finance company, which if appropriate, is proposed will finance any purchase or part of a purchase, with the information that the company requires to evaluate the proposition. Such consent being required under the Data Protection Act 1998 or as amended and updated.
- 2.5 **Term or length of Agreement.**
- 2.6 The term or length of this Agreement shall be the Initial Term which shall then roll over into a subsequent Follow Up Term and then subsequent Follow Up Terms thereafter, unless or until terminated by either party giving not less than 90 days' written notice to the other party prior to the expiry of either the Initial Term or any subsequent Follow Up Terms, dependent upon which term is current.
- 2.7 The length of the Initial Term is the contract period shown on the Bromcom Quotation sent to the Customer and is for a 1 year or multiple year contract. At the end of the Initial Term the contract will roll over on the same conditions to a 5-year long term (the Follow Up term), unless notice is given by Customer to Bromcom at least 90 days in advance of the end of the Initial Term to either terminate the contract at the end of the Initial Term or to enter into a new contract for one or multiple years.
- 2.8 The length of the Follow Up Term is 5 years and is the contract period which follows the Initial Term (or a previous Follow Up Term). Each Follow Up Term will roll over into a further Follow Up term of 5 years unless notice is given by Customer to Bromcom at least 90 days in advance of the end of the Follow Up Term in question.
- 2.9 Notice may be given at least 90 days in advance of the end of the Initial Term or the Follow Up Term to either:
- [1] Terminate the contract completely at the end of the term, or
 - [2] Terminate the contract at the end of the term and enter into a new contract for one or multiple years. This second choice will typically attract a 15% surcharge to the price.
- 2.10 To effect termination of the contract as outlined above, written and posted notice is required to be sent on the school, academy or company headed paper as appropriate, signed by the head teacher or authorised signatory, together with a note of the type of termination required and as further described in clause 15.19.

3.0 PRICING AND PAYMENT

3.1 Customer shall pay Bromcom the price for the licence fees for the Bromcom Software (including the cloud service charges for SaaS if applicable) and/or Other Software and/or any other services or fees as specified in the Order Acknowledgement in pounds sterling on the date[s] specified in the Order Acknowledgement. All such amounts are exclusive of VAT and equivalent taxes on sales and supplies unless otherwise stated. The said taxes will be added to the invoice and the whole price including taxes shall be paid without set-off or deduction and free from all withholdings.

3.2 All payments to be made by the Customer under this Agreement shall be paid to an account designated by Bromcom either by direct debit instruction or BACS transfer and shall arrive on or

before the due date in cleared funds. Prompt payment of all sums due under this Agreement is an essential condition of this Agreement.

- 3.3** The Customer agrees and accepts that its obligation to pay all the sums due under this Agreement on each due date for payment is absolute and unconditional and shall not be subject to any right of set-off, counterclaim, abatement, reduction, deferment or withholdings of any nature (save as at law). In the event that any taxes, deductions or withholdings are required by law, the Customer undertakes to pay such additional amounts as necessary in order that the net amounts received by Bromcom after all deductions and withholdings will not be less than such payments would have been in the absence of such deductions and withholdings.
- 3.4** The Customer agrees that Bromcom may assign all or part of its right, title and interest in and to the sums due under this Agreement to an Assignee. The Customer will be notified of the assignment and the Customer's payment obligations will then be owed to and enforceable by the Assignee and the Assignee shall be entitled to give the Customer good discharge for all the sums due and assigned to it under this Agreement. Following an assignment to the Assignee any payment made by the Customer to Bromcom will not release its payment obligation to the Assignee.
- 3.5** The Customer hereby irrevocably consents to the assignment to the Assignee and undertakes that it will, if requested, confirm its consent to the assignment in writing.
- 3.6** The Customer further agrees that the Assignee shall have no responsibility for the Products, or any of the services performed or to be performed by Bromcom and that it is reasonable for the Assignee to exclude its liability for these. The Customer's sole remedy for any breach by Bromcom under this Agreement is a matter between the Customer and Bromcom.
- 3.7** In addition to and without prejudice to any other remedies that may be available, interest will accrue in respect of any sum outstanding to Bromcom on a daily basis both before and after any judgement at the rate of 3% per annum above the base rate from time to time of Lloyds Bank plc, and will be payable on demand.
- 3.8** Any sums paid by Customer to Bromcom and not expressly allocated by Customer to any invoice payment due from Customer may be allocated by Bromcom as it sees fit.
- 3.9** In the event that there is any oversight by Bromcom whereby an invoice is not charged to a Customer by the due date, Bromcom reserves the right to subsequently invoice the Customer for the monies due.
- 3.10** During the INITIAL term and any FOLLOW UP term the total of all charges for the term become payable at the start of the contract term. However, as a standard procedure Bromcom typically allows for payments to be made annually in advance during the contract term. Please note that should there be a termination by Customer before the end of the term or an irreparable breach of the contract by Customer at any time during the term, the remaining sum in the remaining contract term or terms becomes payable immediately.
- 3.11** During the term of each contract, and when invoices are sent out describing the annual charges, prices are subject to adjustment according to changes in the Office for National Statistics Retail Price Index (RPI).
- 3.12** **Payment terms** unless otherwise stated in writing are as in the next paragraph.
- 3.13** 100% of the Year 1 Software, including SaaS Software with Cloud Computing hosting charges and First Year Setup charges, are payable on order. 100% of Training services apportioned to Year 1 are payable on order. For second and subsequent years, in the INITIAL or FOLLOW UP term(s), an invoice will be sent annually in advance describing the charges for each year of service and these invoices must be paid in advance of the period covered, subject always to clause 3.10.
- 3.14** **Contract Start Date**

3.15 Year 1 of the Software year and this Agreement starts from the Contract Start Date which is the date that Bromcom commits resources to the contract and this is the same as the Customer's purchase order date, unless otherwise specified in writing.

4. SOFTWARE

4.0 Licence to use Bromcom and Other Software.

4.1 Bromcom licenses the use of the Software subject to payment by Customer of the Software annual maintenance fee.

4.2 Bromcom hereby grants to Customer a non-exclusive, non-transferable licence to access or use Bromcom and Other Software on Customer Equipment at the address of the Customer for the purpose of managing the Customer's establishment only. Save as provided in clause 4.7, Customer shall only be permitted to use the Bromcom or Other Software on Customer Equipment at the physical address of the Customer. Other Software shall only be used subject to the terms of the creator of the Other Software.

4.3 Customer shall not sell, lease, hire or otherwise part with any part of, or part with their access rights to, Bromcom or Other Software and/or associated documentation nor act as a bureau service to a third party by using the facilities of Bromcom or Other Software to produce information for third parties, nor attempt, nor allow third parties to attempt to copy, decompile, or reverse engineer Bromcom or Other Software, nor permit any third party to use Bromcom or Other Software and/or documentation either on behalf of Customer or for the benefit of any third party and undertakes not to make Bromcom or Other Software available in any way to any party unless authorised by Bromcom. Customer further undertakes not to use sell, lease, hire or otherwise make available in any way, any software developed by Customer, and person(s) acting on behalf of Customer, which is dependent on or integrates with Bromcom or Other Software unless written agreement has been obtained from Bromcom.

4.4 If Bromcom or Other Software cannot be used with Customer Equipment because said equipment is inoperable for any reason this licence to use shall be temporarily extended to use on or with other compatible equipment directly under the Customer's control. Bromcom cannot be responsible for deterioration in the performance of Bromcom or Other Software arising from such transfer.

4.5 If Customer transfers ownership or otherwise disposes of Customer Equipment onto which the Bromcom or Other Software and any links thereto is loaded the Customer shall at the time of transfer or disposal, ensure that Bromcom or Other Software and any links thereto has been deleted from the Customer Equipment.

4.6 Customer may in certain circumstances be relocated to another location. Bromcom shall permit Customer to permanently change the licence location accordingly, by written notice in advance of the change to Bromcom.

4.7 The licence to use granted under this section 4 is extended so as to allow use of Software and documentation by staff of Customer at their homes with authorisation of a senior manager of Customer, in so far as it is necessary to fulfil their roles, provided any equipment on which Software resides is owned or under the control of the person concerned and that should Software be loaded onto such equipment, that Software and any links thereto is deleted therefrom before disposal of equipment and/or disks used by the person, and provided that all other restrictions of use set out herein shall apply to the person's home as it would to the Customer Site. Customer shall ensure that if such a person ceases to be an employee of the Customer, then should Software and any links

thereto be loaded onto such equipment, that person must return any Software and documentation and all copies thereof to Customer Site and delete all Software and any links thereto from equipment at the home location on or before termination of employment with Customer.

4.8 Customer acknowledges that it is licensed to use Bromcom and Other Software and documentation only in accordance with the express terms of this Agreement and not further or otherwise. The Customer shall ensure that only Authorised Users use the Software. Authorised Users means those users who are employed or otherwise engaged by the Customer and who are specifically chosen, instructed and formally authorised by the Customer to use the Bromcom Software. The Customer shall ensure that the Authorised Users use the SaaS and the documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement. In relation to the Authorised Users, the Customer undertakes that: [a] it will manage the creation and maintenance on user accounts and access rights for all Authorised Users for its service account on the SaaS; [b] it will ensure that only appropriate user accounts are created and those accounts are only accessed by users to fulfil their roles in so far as it is necessary for the purpose of managing the Customer's establishment; [c] it will not allow or suffer any user account to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the SaaS and/or documentation; [d] each Authorised User shall keep a secure password for his use of the SaaS and that each Authorised User shall keep his password confidential; [e] if a person ceases to be an employee of the Customer, then that person must return documentation and cease access or use of the SaaS on or before termination of employment.

4.9 Installation of Software on Site.

4.10 Unless installation is being provided by Bromcom under this Agreement, Bromcom shall have no liability or responsibility whatsoever for the success of installation by Customer, of Bromcom Software or Other Software. Where installation is a service to be provided on Site by Bromcom, Bromcom shall deliver Software or Other Software to Site and load same onto the Customer Equipment on a date to be agreed with Customer. Where installation is delayed through no fault of Bromcom for any reason, Customer shall pay Bromcom's reasonable costs at Bromcom's then current rates if Bromcom have to repeat and/or extend the installation visit as a result. In the unlikely event that installation is unsuccessful through the fault of Software any increase in installation costs to Bromcom resulting therefrom shall be borne by Bromcom. Alternatively, the installation service may be provided remotely.

4.11 Installation for SaaS means the creation of an account by Bromcom on the SaaS infrastructure for the Customer. Once the account is created, Bromcom will inform the Customer and provide an administration user account and details of the Web Site Address.

4.12 Customer Responsibilities when using the Software.

4.13 It is Customer's responsibility to ensure that Customer Equipment is suitable for the Bromcom Software on which it is to be used or reside and for ensuring that Customer Equipment and any relevant cabling and connections are fully operational and in working order and that memory and disk capacity are sufficient to allow successful operation of the Bromcom or Other Software.

4.14 Subject always to Bromcom conforming to safety and security requirements of Customer, Customer shall afford to Bromcom personnel reasonable access to Customer Site at all reasonable times for any purpose under this Agreement.

4.15 Customer understands and accepts that it may be necessary for Customer to supply information to Bromcom about and/or to give Bromcom personnel access to Customer's staff, data, Customer

Equipment etc., in order to enable Bromcom to perform its obligations under this Agreement. Customer will use all reasonable endeavours to meet the reasonable requirements of Bromcom in this respect as any failure in this regard may result in delays and/or costs which shall be for Customer's account.

4.16 Bromcom Software Warranties.

4.17 Bromcom supplies "Off the Shelf" also known as "Commercial Off the Shelf" software that is configurable and does NOT supply "custom written", "bespoke" or "specially written" software" unless specifically otherwise agreed in writing.

4.18 Bromcom warrants that the latest version of Software which it delivers to Customer shall operate generally in accordance with the software description and/or the software upgrade notification and with any Software manuals, which may form part of documentation supplied with such Software. Whilst no software from any supplier can be said to be error free, Bromcom's obligation under this warranty shall be to use reasonable endeavours to correct any faults that are found and reported in accordance with its Software annual maintenance procedures and routines.

4.19 Software annual maintenance

4.20 Bromcom provides the Software annual maintenance service as a compulsory part of the licensing of the Software. The payment of a Software annual maintenance fee by Customers includes Software annual maintenance (including but not limited to the fixing of bugs, the provision of necessary software updates as a result of statutory changes imposed by the Department for Education (in England), the review, updating and rearrangement of software modules, etc.), the Software licence fee, a hosting fee for SaaS Software (if applicable), the Bromcom customer care service and the Help Desk service. These services, the details of which are set out in Bromcom literature as published from time to time, are provided by Bromcom either directly or by another third party which has a written agreement with Bromcom to do so.

4.21 For invoicing purposes, the first period of Software annual maintenance covers the period from the effective date of the Agreement for such period of one year after the effective date. Year one of the Software year starts from the date on which the Customer school/college is provided with the SaaS or cloud account or from the Installation Date for on Site installed Software, unless otherwise specified in writing.

4.22 From time to time for invoicing purposes the first Software annual maintenance year may be extended or shortened as necessary to arrive at an end date of 31st March for year one, in case Customer wished to coincide payments with the financial year for maintained schools. The cost of any extended or shortened first period of Software annual maintenance will be calculated in pro-rata proportion to the annually invoiced fee.

4.23 Thereafter Software annual maintenance invoicing shall continue from year to year automatically running from the anniversary of the end of Year One, during the Initial Term and Follow Up Term(s).

4.24 Software annual maintenance is charged at the rates issued by Bromcom from time to time based on the Bromcom quotations issued to Customers. Software annual maintenance invoices are issued annually in advance, unless a contract is terminated in accordance with Clause 2.9. Any request by the Customer to change the number of active Software modules and/or any other Products listed on the Software annual maintenance invoice, must be made in writing at least 90 days before the end of the annual maintenance period. This is because inter alia maintenance invoices are calculated in advance and issued before the Software annual maintenance year end.

Any changes requested after the 90 days will be subject to an administration charge. Any proposed amendment that effectively amounts to the termination of this Agreement is subject to Clause 2.9.

4.25 Software Copying.

4.26 Customers using Software installed on Site may make such copies of Software and documentation as is reasonably necessary for operational security and use. Such copies and the media on which they are stored shall be the property of Bromcom and/or its licensors and Customer shall ensure all media on which copies are stored bear the same proprietary notices as are affixed to the media on which Software was supplied to Customer. The provisions herein shall apply to all such copies as it applies to the original Software and documentation. Customer shall keep a record of the number and whereabouts of all copies of Software and shall permit Bromcom or its representatives to inspect such record at all reasonable times.

4.27 Software as a Service and Remotely Hosted Software

4.28 For Customers using SaaS Software that is remotely hosted by Bromcom, the Web Site Address and password details for the Customer to access the Software is provided by Bromcom. All of the Customer's Software programs and data are hosted on a secure hardware infrastructure that is situated remotely from the Customer. Any costs associated with accessing the hosted service including but not limited to the Customer's broadband connection, are the responsibility of the Customer.

4.29 The terms on which any of Bromcom's hosting companies host the Bromcom Software are broadly similar. The terms on which the hosting companies host the Software apply to the use by the Customer of the hosted service as the hosting service is purchased by Bromcom for use by Customers. The current (August 2019) and default Bromcom hosting company is Reference -GM. The GM terms are summarised below and apply to the Customer. In the case of hosting provided by other Bromcom hosting companies please apply to the Company Secretary at Bromcom for the specific terms of these companies although they should be broadly similar.

4.30 The secure network infrastructure (of the Bromcom hosting company) will be available, known as up-time availability- nearly 100% of the time. One hundred percent remotely hosted network infrastructure availability means that all GM infrastructure including routers, switches and cabling are working. The secure network infrastructure is defined as the portion of the network extending from the outbound port of the Bromcom cabinet switch at the third party hosting company (GM) to the outbound port on the GM border router. For the avoidance of doubt services or Software running on Bromcom owned servers within the GM infrastructure are not counted as part of the network. Not included in the calculation of up-time availability is scheduled maintenance. A factor affecting up-time availability is unplanned network failure.

4.31 Scheduled maintenance. Bromcom customer care will notify Customers, usually by email, of scheduled maintenance events which will include events scheduled by the hosting company and by Bromcom.

4.32 Unplanned network failure. Service level agreement (SLA) credits, in the form of credits only, based on the Bromcom account with its cloud hosting company [GM] may be available in any month in the case of this type of failure by the hosting company. The maximum value of service credits in any one month that might be available to all Bromcom customers and subject to hosting company terms and conditions is equal to Bromcom's monthly subscription charge by the hosting company to Bromcom. Credit available to an individual Bromcom Customer in any one month in the case of this type of failure is up to a maximum value equal to the daily service rate, i.e. 1/365 of the annual

hosting company charge to Bromcom, divided between all Bromcom hosted Customers, for one or more outage of service.

- 4.33** Any credit due to a Customer for an unplanned network failure shall be allocated to the end of the Customer's Initial Term or Follow Up Term as applicable. The amount of any credit shall be calculated and allocated in the form of extra or additional time as an extension to the Initial Term or Follow Up Term.
- 4.34** On the secure network infrastructure Bromcom will be responsible for firewall management and will install, configure and maintain a hardware firewall on the said remotely hosted network infrastructure. On the remotely hosted network infrastructure Bromcom will be responsible for backup management and will perform a daily backup of the remotely hosted network infrastructure systems and all specified Customer data held on the remotely hosted network infrastructure system. On the remotely hosted network infrastructure Bromcom will be responsible for anti-virus software management and will install, configure and maintain anti-virus software, which will update at least daily.
- 4.35** The processing of Customer personal data or metadata is limited to that necessary to deliver or improve the SaaS and is not processed for any other purpose and not passed on to others without the written consent of the Customer.
- 4.36** In the case of Customers using the Software where help desk, support or other services are provided by a Bromcom Partner or other authorised third party, (and including those Customers supplied directly by Bromcom) then those Customers agree to allow Bromcom to contact them directly for the purpose of carrying out customer satisfaction surveys. Should Bromcom find during the course of such a survey that there is dissatisfaction with any aspect of the service provided directly, or via the Bromcom Partner or other authorised third party entity, then Bromcom reserves the right to make further direct contact with the Customer, attempt to understand the cause of the dissatisfaction, and use Bromcom's reasonable endeavours either via the Bromcom Partner or directly to remedy the cause of the dissatisfaction.
- 4.37** Should Bromcom, in its own assessment, determine that a Bromcom Partner has caused or contributed to the dissatisfaction of the Customer, then Bromcom reserves the right to take direct remedial action and/or request the Bromcom Partner to do so.

5. TRAINING, CONSULTANCY, & GO-LIVE DAYS

5.0 Training

5.1 Training, if ordered, is as set out in the Order Acknowledgment. Bromcom provides training for school/academy/end-user Customers and train-the trainer training for central support teams for a specified time period. The training time periods may be taken on Bromcom scheduled courses at any time within either the period specified on the Order Acknowledgement or else within 6 months, if no period is specified, subject to the course(s) not being full. The period of 6 months is reckoned from the effective date of this Agreement. Training may be provided using one or more of the following methods; a remote session over the Internet (webinar), and/or at the Customer's Site, and/or at another location agreed at point of order and set out on the Order Acknowledgement. Customers attending a training webinar on Site should be in a quiet room to minimise background noise.

5.2 Any third party providing training for Bromcom Software must have authority or other written arrangement from Bromcom to provide such services.

5.3 Consultancy

5.4 Consultancy concerns the examination of plans, strategies and/or problems concerning the Customer's specific application of the Software. On-Site and other consultancy days are chargeable and subject to the availability of the appropriate Bromcom staff. As specialist staff are allocated to provide consultancy, consultancy days may be subject to change at short notice.

5.5 Any third party entity providing consultancy services for Bromcom Software must have its own authority or other written arrangement with Bromcom to provide such services.

5.6 Go-Live Days

5.7 As specialist staff are allocated to provide On-Site 'go-live' days, these days are subject to the availability of appropriate Bromcom staff and may be subject to change at short notice.

6. HELP DESK & SOFTWARE MAINTENANCE

6.0 Help Desk service by third parties

6.1 Bromcom offers a Help Desk & Software maintenance service to Customers, and recognises that some Customers prefer other or more local help desk support services. Any third party entity providing help desk, support or other services for Software must be a Bromcom Partner or have a written arrangement with Bromcom to provide such services, otherwise such entities would be acting in breach of Bromcom's copyright in Software, and Customer would be in breach of clause 4.3 of this Agreement in granting access to unauthorised entities. Bromcom will upon request assist Customer in confirming authorisation from Bromcom if Customer wishes to approach or is approached by a third party entity. Bromcom cannot accept any liability or responsibility for the services provided by unauthorised entities. It is the Customer's responsibility to check authorisation from Bromcom before allowing a third party entity access to Software licensed to Customer by Bromcom.

6.2 Bromcom Help Desk

6.3 Use of the Bromcom Help Desk is subject to these conditions. Bromcom Help Desk agents will expect Customers to be using the Bromcom Software according to the Software licence terms (section 4 above). In consideration of the said Software annual maintenance service, which includes the Bromcom Help Desk service, the Customer shall, subject to the conditions in this Agreement (including paragraphs 2.1 and 4.20), pay to the Company the Software annual maintenance charge in the amount and at the intervals set out in the Company's invoices to the Customer each such payment to be made in advance of the period covered.

6.4 The service provided by the Bromcom Help Desk includes the examination of any reported problem with the Software by use of the telephone, broadband, email or other means. Bromcom Help Desk will assist the Customer in understanding the Software, explain the advanced features of the Software and explain the information in various publications supplied by Bromcom for the said Software.

6.5 Help Desk support excludes the examination and solution of problems concerning the Customer's specific application of the Software, which can be provided in the form of consultancy.

6.6 Help Desk support excludes the examination of problems where the Customer contact concerned has not been trained or appears not to have been trained to use the Software. The service provided by the Bromcom Help Desk is not designed to be a substitute for proper and adequate training. Bromcom Help Desk will endeavour always to provide a solution to a problem experienced in the use of the Software. However, where a Customer contact is

experiencing difficulty understanding inter alia basic principles in the use of an application/module/work method, and has evidently not had sufficient training, the Help Desk agent may be obliged to recommend a training course, training guides or other training materials as the solution and mark the case as resolved.

- 6.7** If Help Desk is not able to provide a solution to a reported problem within reasonable timescales because of a fault with the Software, the agent will report the problem to the Software or Other Software creator. In the case of a Bromcom Software problem this will be reported to the Head of Software at Bromcom. As an interim solution the Software or other Software creator may provide alternative methods of achieving the required result (i.e. a work-around) which should be used while a software fix is engineered. Customer should use the work-around until such time as the software fix is engineered and presented via a software upgrade or other method.
- 6.8** Where a fault is found in the Bromcom Software, Bromcom will use every reasonable endeavour to repair the Software or find a work-around where one is available. Help Desk is not responsible, under this Agreement, for fixing reported faults or malfunctions in Other Software and the provision of an updated or fixed version of Other Software, if available, is at the discretion of Help Desk.
- 6.9** In order to provide support under this Agreement to on-Site installed Software, Help Desk relies on the Customer allowing broadband and sometimes other means of communications access when requested by Bromcom staff. Customer agrees to facilitate such access, and Bromcom agrees to comply with any reasonable ICT security policy requirements of Customer. Failure by the Customer to provide this access promptly when requested by Help Desk will result in delay in the investigation of the Customer's support request, which would be outside of any service level guidelines issued by the Help Desk.
- 6.10** Customers using SaaS automatically grant Bromcom Help Desk permission to access their remotely hosted data for the purposes of carrying out the Help Desk function.
- 6.11** In order to provide the support service to on-Site installed Software, Bromcom may consider it necessary to ask the Customer to send in their Software application and / or data files or part thereof on a medium for which Bromcom has investigation facilities.
- 6.12** In order to expedite the Software investigation, Bromcom Help Desk may at their discretion transfer the Software and / or data files of Software installed on-Site via Broadband or other method to Bromcom.
- 6.13** Whether the Customer requesting the Bromcom Help Desk service has on-Site installed Software or is using SaaS, the Customer agrees to promptly furnish full descriptions of any reported malfunctions in the form requested by the Bromcom Help Desk agent. The Customer also agrees to assist Bromcom's efforts to duplicate the reported Software problem by responding promptly, fully and in detail to any further requests of the Help Desk.
- 6.14** During the use of the Bromcom Help Desk service, if telephone, broadband or other support is initiated by the Bromcom Help Desk then all telephone call and broadband charges incurred during the use of said support are the responsibility of Bromcom. The Customer is responsible for any charges incurred when the Customer's telephone line, broadband or other chargeable method of communication is used for the purposes of contacting the Help Desk.
- 6.15** Bromcom will provide support only for the currently supported versions of the Software. As at September 2019 only the latest version of Bromcom Software is provided and supported for SaaS Customers. Support for the on-Site installed Software Customer who is using unsupported versions of the Software will be provided upon purchase of an upgrade to a currently supported version of the Software. A Customer may apply in writing to Bromcom's Head of Customer Services to establish which specific versions of Software are currently supported.

- 6.16** For Customers using Other Software supplied by Bromcom, Help Desk shall make available to the Customer such improvements and modifications and enhancements to the Other Software as the Other Software manufacturer shall make and release from time to time and which are compatible with the version installed for the Customer and computer system on which it resides. The Customer shall have the option to install these revised releases of the Other Software, the provision of which may be subject to an additional fee payable by the Customer. Failure to install a revised/fully up-to-date release of the Other Software may delay or prevent the most efficient support of the Other Software.
- 6.17** Customers may use the Bromcom online Help Desk call tracking/logging system 24 hours a day 365 days a year.
- 6.18** Person to person Help Desk support is provided during the Bromcom Help Desk opening hours, as published from time to time by the Bromcom Help Desk manager and currently 08:00 am to 17:00 pm daily (except closes at 16:00 on Wednesdays) excluding Saturdays, Sundays, public holidays, Bromcom's internal training days held during the month of August, and Bromcom's annual closedown that is the working week that includes the Christmas and/or Boxing Day Bank Holidays.
- 6.19** When a reported problem is registered with the Help Desk it shall be allocated a priority level code by the Help Desk agent. A guide to such priority level codes is issued from time to time by the Help Desk manager. Help Desk agents will only provide a service to Customers with the correct password and who have paid their Software annual maintenance invoice according to this Agreement. Generally speaking, top priority shall be given to urgent support requests from Customers with e.g. their system down. The allocation of a support request as urgent or non-urgent (or any of the intervening priority level codes) is at the sole discretion of Bromcom Help Desk. For reference purposes, while an urgent support request may be one where the Customer's Software system is down, a non-urgent request is one where the Customer requires to register a software change request. By the allocation of priority level codes to all Customer call requests as they are registered, a more equitable service is provided to all Customers as a whole.
- 6.20** Bromcom Help Desk is not responsible for any failure to fulfil or delay in fulfilling its obligations under the terms of this Agreement due to causes beyond its control, including Acts of God.
- 6.21** Bromcom Help Desk is not responsible for consequential loss suffered directly or indirectly by the Customer or any of his clients if applicable as a result of the Help Desk support supplied under this Agreement.
- 6.22** **The following, described in clauses 6.23 to 6.28 are NOT supported by the Help Desk:**
- 6.23** Altered or modified Software code;
- 6.24** Software problems resulting from hardware malfunction;
- 6.25** On Site Software used on a computer or an operating system other than that on which it was supplied and installed by Bromcom, or that it was agreed in writing by Bromcom to be supplied and installed on;
- 6.26** The creation, correction and/or amendment of data files created maintained or required by the Software.
- 6.27** Adaptation of the Software to fulfil a request made by the Customer. Bromcom supplies "Off the Shelf" also known as "Commercial Off the Shelf" software that is configurable and does NOT supply "custom written", "bespoke" or "specially written" software" unless specifically otherwise agreed in writing. Bromcom welcomes feedback and suggestions for the continued improvement and enhancement of the Bromcom Software via the Help Desk and Customer Care managers. If Other Software has been supplied by Bromcom then Bromcom shall notify any

Other Software creator of any feedback received. Bromcom and any Other Software creator retains the sole discretion as to what use if any is made of such feedback/suggestion notifications.

- 6.28** The free provision of any improvement or modification or enhancement to the Software that Bromcom shall make and release from time to time.

7. DELIVERY AND INSTALLATION OF THE PRODUCTS

- 7.0** Delivery Date means the date specified in the Order Acknowledgement for delivery of any Products. This date may be varied from time to time in respect of any Product by Bromcom giving notice to Customer.
- 7.1** Bromcom will use all reasonable efforts to deliver the Products to Customer either on-Site physically and/or remotely (using SaaS) by providing the Web Site Address for the Products, on the relevant Delivery Date(s), and Customer will accept delivery when made by Bromcom. Subject to Bromcom using such efforts it will not be liable for any delay in delivery or installation so that any delay or failure by Bromcom to deliver or install any item on the relevant Delivery Date shall not permit Customers to refuse delivery of that item or (where other items are to be delivered on other Delivery Dates) of any other item.
- 7.2** Customer shall notify Bromcom in writing regarding any problem with Products delivered to the Customer within ten days of the actual date of delivery.
- 7.3** If Customer requests any delay in delivery of any item beyond the relevant Delivery Date or fails to accept delivery when duly made, Bromcom may (in addition to any other rights it may have) charge Customer the cost of insuring and storing the item concerned, any such charge to be payable on demand. In the case of SaaS Software Bromcom shall be entitled to invoice Customer for the service from the original Delivery Date.
- 7.4** Installation Date means the date on which Bromcom certifies to Customer that the Products have passed Bromcom's standard installation tests (for which purpose Bromcom's certificate is final and binding in the absence of fraud or manifest error). Installation for SaaS means the creation of an account by Bromcom on the SaaS for the Customer.
- 7.5** If the Products or any part thereof is to be installed at a Customer Site by Bromcom under the terms of the Order Acknowledgement, Bromcom shall install the same on or as soon as is reasonably practicable after the date when the same is delivered. Customer shall allow Bromcom free of charge: (a) access to the Site for the purposes of prior inspection and such installation during normal working hours and any hours which may seem reasonable to both parties; and (b) use of electric power and such other facilities as Bromcom may require for the purpose.
- 7.6** Customer shall obtain all statutory regulatory landlord's and other such steps as Bromcom may have reasonably requested to prepare the Site for installation which shall include if necessary the removal or disconnection of any of the Customer's existing equipment at the Site during the period of installation and the clearance of any rooms, ducts, loft spaces or other areas at the Site that require access during the installation.
- 7.7** Installation of the Products shall be considered complete for the purposes of this Agreement on the Installation Date.
- 7.8** In the interests of health and safety the Customer shall ensure that the Company's employees or duly authorised agents whilst on the Customer's premises are accompanied at all times by a member of the Customer's staff familiar with the Customer's premises and safety procedures, unless this is deemed to be not necessary by the Customer. Bromcom will abide by any security arrangements provided they are published and made available in good time to Bromcom

personnel.

7.9 Installation of Products. Unless an alternative installation agreement is specified in the Order Acknowledgement, installation of Products to be installed on Site by Bromcom shall be as per clause 7.10:

7.10 for Bromcom or Other Software, the copying of software (where the software licence permits) onto the Customer Equipment requiring such installations specified in the Order Acknowledgement. In addition, such software shall be set up to recognise the hard disk and screen of this computer and any other item specified as requiring such recognition in the Order Acknowledgement.

7.11 Unless an alternative agreement is specified in the Order Acknowledgement, installation of SaaS shall be as per clauses 7.12 to 7.14:

7.12 the setting up by Bromcom of an account on the SaaS infrastructure for the use by the Customer

7.13 the provision of the Web Site Address to access the SaaS

7.14 the provision of user credentials to the administrator account allocated to the Customer for the purposes of administering access to their SaaS account.

8. WARRANTY

8.0 Warranty Period means in relation to each item of Bromcom Software the period of 90 days and in relation to any services the date 90 days after their performance.

8.1 Bromcom warrants that the Bromcom Software (including SaaS Software) shall materially conform to the performance described in its documentation (manuals and guides) if available relating thereto during the Warranty Period, and always subject to the terms in this Agreement. Services shall materially conform to the description defined in related correspondence between Bromcom and Customer. Bromcom provides Other Software "as is" without warranty of any kind.

8.2 If Bromcom receives written notice in reasonable detail from Customer of any breach of the said warranty that is confirmed by Bromcom as such then Bromcom shall within reasonable time after receiving such notice, fix, repair or, at its option, replace Bromcom Software, (including SaaS Software) or such parts of it as are defective or otherwise remedy such defect provided that Bromcom shall have no liability or obligations under the said warranty unless it shall have received written notice of the defect in question no later than the expiry of the Warranty Period and in any case within one month of such defect becoming known.

8.3 The title of the Bromcom Software or any defective parts shall revert to Bromcom upon repair, replacement or otherwise of the Bromcom Software or other items under warranty. As a precondition to the fulfilment of Bromcom's warranty obligations Customer shall (a) return any item which is the subject of a warranty claim to Bromcom at Bromcom's request and at the Customer's expense and risk and (b) give Bromcom free of charge full access to the Customer Site if applicable and any other assistance as Bromcom may reasonable require to investigate the warranty claim.

8.4 Bromcom shall be entitled to charge Customer at its standard rates applicable at the time for any costs incurred or work done pursuant to a claim which does not come within the scope of the warranty.

8.5 The said warranty is contingent upon the proper use of the Products and/or Software by Customer. Proper use of the Products by the Customer is set out and described elsewhere in this Agreement.

8.6 The warranty does not cover any part of the Products which has been modified without

Bromcom's prior written consent or on which the original identification marks have been removed or altered. Nor will such warranty apply if repair or replacement is required as a result of causes other than ordinary use, including without limitation as a result of failure of or fluctuation of electrical power.

- 8.7** Unless the purpose of the Products is specifically advised to Bromcom in writing by the Customer and Bromcom confirms in writing that the Products can fulfil that particular purpose, Bromcom warrants that the Products are fit for general purpose and does not give any warranty that the Products are fit for any particular purpose.
- 8.8** Unless (a) Bromcom has specifically guaranteed a variation from the general purpose warranty in writing, subject to specified tolerances in an agreed sum as liquidated damages: and (b) the environmental conditions specified by Bromcom are maintained, Bromcom warrants that the Products will achieve general performance criteria and does not warrant that the Products will achieve any particular performance criteria. The payment by Bromcom of any pre-agreed liquidated damages described above (if so agreed) shall be in full satisfaction of any liability of Bromcom in respect of the Products failing to achieve such performance criteria.
- 8.9** Except as expressly provided in the Agreement no warranty, condition, undertaking or term, express or implied, statutory or otherwise, as to the condition, quality, performance, merchantability, durability or fitness for purpose of the Products is given or assumed by Bromcom and such warranties, conditions, undertaking and terms are hereby excluded.
- 8.10** Customer warrants that he has not relied on any oral representation made by Bromcom or upon any descriptions, illustrations or specifications contained in any catalogues and/or publicity material produced by Bromcom which are only intended to convey a general idea of the Products mentioned therein.

9. RISK AND TITLE

- 9.0** The Product shall be at Customer's risk as soon as it is delivered to the Site.
- 9.1** Bromcom shall be entitled to bring an action for any instalment of the price of any Product which has been provided after that instalment has become due.
- 9.2** Risk in the Bromcom Software and documentation shall pass to Customer on delivery to Site. Title to Bromcom Software and documentation remains with Bromcom and/or its licensors at all times.
- 9.3** Risk in the Other Software and documentation shall pass to Customer on delivery to Site. Title to Other Software and documentation is as stated by the terms and conditions of the Other Software creator. When Other Software is provided the Customer shall execute the Other Software manufacturer's applicable software licence in respect of the Other Software on or before the Delivery Date relating to the same and (where Customer is not buying as end-user), shall procure the execution of such a software licence in respect of the Other Software by the end user to whom the Other Software is to be supplied by Customer on or before the date on which the same is so supplied.

10. TERMINATION OF AGREEMENT

10.0 TERMINATION BY EITHER PARTY

Notice may be given by either Bromcom or Customer at least 90 days in advance of the end of the Initial Term or the Follow Up Term to either: [1] Terminate the contract completely at the end of the term, or [2] Terminate the contract at the end of the term and enter into a new contract for one year. This second choice will typically attract a 15% surcharge to the price. To effect termination of the contract by Customer as outlined above, written and posted notice is

required to be sent, in accordance with clause 14.20, on the school/academy headed paper, signed by the head teacher or authorised signatory, together with a note of the type of termination required. Termination of the contract shall not entitle Customer to any return of monies paid or cancellation of monies remaining due to Bromcom in respect of the Customer's contractual obligations and payment to the end of the Initial Term or Follow Up Term becomes due.

10.1 TERMINATION BY BROMCOM

10.2 Bromcom or its Assignee if there has been an assignment may at its option terminate the Agreement or take alternative action in the event that [a] the Customer goes into liquidation or becomes unable to pay its debts when they become due; or [b] has a receiver or administrative receiver appointed over any of its assets; or [c] makes any arrangement or compound with its creditors; or [d] should a Judgment be obtained against Customer and remain unpaid for a period in excess of 28 days; or [e] the Customer is in substantial breach of any of its obligations under this Agreement; or [f] there is any breach by Customer or any of its associated companies including but not limited to obligations to make payments to Bromcom; or [g] Customer fails to pay any monies due under the Agreement within 60 days of the due date; or [h] Customer commits any breach of any term of this Agreement and (in the case of a breach capable of being remedied) fails, within 30 days after receipt of a request in writing from Bromcom to do so, to remedy the breach; or [i] Customer shall do or allow to be done any act or thing which may reasonably be considered by Bromcom to jeopardise any right of Bromcom and/or its licensors in Software and/or documentation or any part thereof and including but not limited to if Customer makes or allows to be made any unauthorised copy of Software and/or documentation or any part thereof and/or impart or divulge the contents of Software and documentation or any part thereof to a third party without the prior written consent of Bromcom.

10.3 If any of the events set out in clause 10.3 occur Bromcom (or its Assignee if there has been an assignment) may, by notice in writing to Customer, with immediate effect (or with effect from such later date as may be specified in such notice) take any or all of the actions in clauses 10.5 to 10.7. provided always that clauses 10.16 to 10.19 shall survive and remain in force following any termination of the Agreement.

10.4 terminate this Agreement in whole or in part by treating itself as discharged from further performance of any or all of Bromcom's obligations under this Agreement; and/or

10.5 cancel any credit term provided under this Agreement and require that the Customer pays in full and on demand the aggregate of (a) all arrears of payments and any interest due thereon under clause 3.2; and (b) all remaining payments which would have fallen due but for the termination of this Agreement less a discount of 3% on each payment to reflect early receipt.

10.6 bring to an end the term of the licence referred to in section 4. If Bromcom thus brings to an end the term of any such licence, Customer shall return any on Site installed Software and documentation and all copies thereof and/or any part thereof or, if requested by Bromcom, destroy the same. At the same time Bromcom shall be entitled to repossess all such Products including Software to the extent not sub-licensed by Customer in accordance with any such licence, as has already been delivered to Customer and to have access to the Site for that purpose at any time and those items shall automatically cease to be in Customer's possession with Bromcom's consent. In the case of SaaS, Bromcom shall withdraw the Customer's right to use the SaaS and shall be entitled to remove access to the services either by removal of the Customer SaaS account or by any other means and the Customer agrees to not attempt to make

any further use of the SaaS. Any references to Bromcom in this clause shall apply equally to Bromcom's Assignee if there has been an assignment.

- 10.7** Bromcom (or its Assignee if there has been an assignment) may at its option terminate the Agreement or take alternative action in the event that [a] Customer ceases to exist as an entity in its own right for whatever reason including but not limited to being subsumed within another, or split into more than one establishment; or [b] Customer assigns this contract to a third party without the prior written consent of Bromcom; except always that the terms in clauses 10.13 and 10.14 apply to a Customer, being a school, that changes legal status and becomes an academy which has been created under the Academies Act 2010 or any subsequent amendment or re-enactment.
- 10.8** If any of the events set out in clause 10.8 occur Bromcom (or its Assignee if there has been an assignment) may, by notice in writing to Customer, with immediate effect (or with effect from such later date as may be specified in such notice) take any or all of the actions in clauses 10.10 to 10.12. provided always that clauses 10.16 to 10.19 shall survive and remain in force following any termination of the Agreement.
- 10.9** terminate this Agreement in whole or in part by treating itself as discharged from further performance of any or all of Bromcom's obligations under this Agreement; and/or
- 10.10** cancel any credit term provided under this Agreement and require that the Customer pays in full and on demand the aggregate of (a) all arrears of payments and any interest due thereon under clause 3.2; and (b) all remaining payments which would have fallen due but for the termination of this Agreement less a discount of 3% on each payment to reflect early receipt.
- 10.11** bring to an end the term of the licence referred to in section 4. If Bromcom thus brings to an end the term of any such licence, Customer shall return any on Site installed Software and documentation and all copies thereof and/or any part thereof or, if requested by Bromcom, destroy the same. At the same time Bromcom shall be entitled to repossess all such Products including Software to the extent not sub-licensed by Customer in accordance with any such licence, as has already been delivered to Customer and to have access to the Site for that purpose at any time and those items shall automatically cease to be in Customer's possession with Bromcom's consent. In the case of SaaS, Bromcom shall withdraw the Customer's right to use the SaaS and shall be entitled to remove access to the services either by removal of the Customer SaaS account or by any other means and the Customer agrees to not attempt to make any further use of the SaaS. Any references to Bromcom in this clause shall apply equally to Bromcom's Assignee if there has been an assignment.
- 10.12** In the case of a Customer, being a school, that changes legal status and becomes an academy which has been set up under the Academies Act 2010 or any subsequent amendment or re-enactment, this Agreement is deemed to be assigned to the newly established academy without additional charge for the amendment of the software licence and without additional charge for the assignment of the Agreement, provided that due notice in writing in advance is given by Customer and except as provided for in the next clause.
- 10.13** Should a Customer becoming an Academy fail to inform Bromcom of its establishment as a new legal entity, inform Bromcom of the same after the start date for the academy, or otherwise breach the terms of the Bromcom licence in the course of becoming an academy, Bromcom shall be entitled to make a full charge for the amendment of the Software licence and for the assignment of the Agreement to the newly established academy.

10.14 Clauses that survive termination or expiration of Agreement

- 10.15** The following clauses shall remain in force following the termination or expiration of the Agreement.
- 10.16** Any termination of this Agreement (howsoever occasioned) or expiration shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any term, condition or provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.
- 10.17** Termination shall not entitle Customer to any return of monies paid or cancellation of monies remaining due to Bromcom in respect of the Customer's contractual obligations.
- 10.18** Clauses 13.3 and 13.4 (Confidentiality) shall survive the termination or expiration of this Agreement until all confidential information is legally within the public domain.

11. REMEDIES OF CUSTOMER AND DISPUTE RESOLUTION

- 11.0** The rights and remedies of Customer set out in this Agreement are exclusive of any other rights and remedies under statute, in contract, tort or otherwise, at law or in equity, in relation to any matter to which these conditions relate save as set out below and as specified in the Order Acknowledgement.
- 11.1** Bromcom does not seek to exclude or limit any liability it may have to Customer for death or personal injury caused by negligence.
- 11.2** Bromcom's liability to Customer for any damage to physical property caused by negligence shall be limited to £500,000 for any one act or omission or series of connected acts of omission.
- 11.3** Any liability Bromcom may have to pay as damages or other sums to Customer either for each breach of its obligations under section 8 or (notwithstanding and without prejudice to the provisions of this Agreement) in contract or tort or any other way other than damages coming within clauses 11.1 and 11.2 shall be limited to amounts which in aggregate do not exceed the sum paid by the Customer to Bromcom for the Products.
- 11.4** In no circumstances shall Bromcom be responsible or liable to Customer or any third party for any consequential or indirect loss or damage howsoever caused (including without limitation loss of anticipated profits or revenues or loss of business or goodwill) save to the extent that Bromcom has agreed in writing with Customer to take responsibility for them.
- 11.5** The Customer is best able to seek insurance for, or otherwise evaluate and manage, those areas in respect of which no liability is accepted by Bromcom under this Agreement.
- 11.6** Customer shall procure that no employee, licensee or customer of Customer makes any claim against Bromcom in respect of any matter to which this Agreement relates save to the extent that Bromcom has a liability or obligation in respect of that matter under the terms of the Agreement.
- 11.7** Under the Contract (Rights of Third Parties) Act 1999, this contract is not intended to create any benefit, claim or rights of any kind whatsoever enforceable by any person not a party to the contract.
- 11.8** If a dispute arises out of or relates to this Agreement, or the breach, termination, validity or subject matter thereof, or as to any related claim at law, in equity or pursuant to any statute, the parties to this Agreement and the dispute expressly agree to endeavour to settle the dispute by review and discussion of the subject matter, either by correspondence (including email), telephone and/or meeting between the parties before resorting to litigation or similar recourse.

12. SPECIFIC PRODUCTS

- 12.0 Bromcom MIS: Document Management System (DMS) - Reasonable use storage limits & charges.** The Document Management System, as part of the SaaS based MIS software, is allocated a reasonable use limit in terms of the total storage capacity per type of school/academy. There is a reasonable use limit for different types of school. The reasonable use limit is set by the Customer Care department at Bromcom and subject to review and change. If the reasonable use limit is exceeded there will be an extra charge which is also set by the Customer Care department at Bromcom; and this also is subject to review and change. The DMS storage limit has been set to ensure that for a typical installation, a reasonable and sufficient amount of storage space is available. If the Customer is approaching or exceeding the reasonable storage limit, Customer should use the tools within the Software with a view to the Customer either carrying out housekeeping to reduce the amount of DMS storage space used or paying for the additional storage over and above the reasonable use limit.
- 12.1 Safety & Security Products.** Software supplied and installed as part of a safety & security system is designed to supplement existing security procedures of the Customer. The Customer should review its whole process and ensure the proper working of the procedures that are being supplemented.
- 12.2** Software supplied and installed as part of a safety & security system is designed to indicate that a safety or security alert has been initiated. Bromcom does not undertake that the Software will indicate the location of any person initiating the alert as this will depend upon other system components. Data imported into the safety and security Software from an external source should be checked to determine its availability accuracy and validity and any radio coverage should be checked.
- 12.3 Customer Equipment using a radio network.** Any radio network which is used in conjunction with the Software is the responsibility of the Customer. Due to the nature of radio wave propagation blind spots may exist within a building or physical space and Bromcom cannot be held responsible for failure of Bromcom Software to perform correctly when operated in a blind spot.
- 12.4 SMS texts – general.** The following terms apply to Customers provided with SMS messages by Bromcom. Customer must comply with certain pre requisites in order to use the Bromcom Software (e-Contact) to send SMS messages. The Bromcom system upon which the SMS messaging software is installed must be approved by Bromcom must have a minimum technical specification, use the Microsoft .net operating system and must be able to connect to the internet. Only SMS texts with a destination in the UK are allowed otherwise the Customer may receive a surcharge in addition to the price paid for the SMS messages. SMS texts may not contain advertising, promote premium rate numbers or be used for unlawful purposes. 8 bit messages should not be sent. Mobile phone text-messaging technology (SMS) is inherently a 'best effort' delivery medium with no guarantee of successful delivery. SMS messages will be transferred to the addressed mobile recipients provided that the recipient's phone is switched on and located in the area covered by his subscribed mobile network provider and the provider and mobile phone support SMS delivery. SMS message content is transmitted unencrypted and access by unauthorized third parties is possible. The SMS service provider reserves the right to carry out technical maintenance of its system.
- 12.5 Unlimited SMS texts - Fair Usage Policy.** Bromcom provides Customers with multiple options to purchase their SMS texts for use with e-Contact. In all cases the SMS texts must be paid for in advance either by purchasing a set quantity of texts as a bundle or by purchasing the Unlimited Text bundle option.

- 12.6** Text purchases are applied to the Customer's e-Contact account and the balance can be reviewed on the e-Contact home page. For those purchasing the Unlimited Text bundle option the balance will always show 'Unlimited'. The 'Unlimited' option is designed to offer high text users with Bromcom's lowest cost per text subject to our fair usage policy. The Unlimited Text bundle gives a Customer access to send text messages for up to one year from the date it is applied to the Customer's account subject to the Customer not exceeding their Upper Usage Limit. On reaching the Customer's Upper Usage Limit or one year after the Unlimited Text bundle start date, whichever comes first, the Customer's Unlimited Text account will finish and no further texts can be sent until a new text bundle is purchased.
- 12.7** The Upper Usage limit is set by multiplying the number of students on roll by 125. The figure of 125 represents the average number of texts sent per student and does not restrict the number sent of any one student or contact etc. For example, a Customer school with 1200 pupils will have their Upper Usage Limit set to 150,000 texts.
- 12.8** Bromcom periodically checks the usage on the Unlimited Text bundle accounts and if during one of these checks, it is found that the number of texts used by a Customer is 90% or more of their Upper Usage Limit, Bromcom will inform a Customer at the next available opportunity of the number of texts used and will discuss the options available if the Customer has or expects to reach the upper limit before reaching the Unlimited Text bundle end date. For those Customers that do not reach the Upper Usage limit, Bromcom will endeavour to make contact before their Unlimited Text bundle end date to discuss text bundle options and ensure continuation of the text service from e-Contact. The Unlimited Text bundle costs and Upper Usage Limit is subject to annual review and potential change.
- 12.9** Bromcom may suspend without notice any e-Contact text account to prevent further messages being sent if the Upper Usage Limit is reached or if Bromcom reasonably suspects that the texts are being exploited for commercial benefit. Bromcom reserves the right to amend or vary the terms of the Unlimited Text Fair Usage Policy, or to withdraw the Unlimited Text option at any time.
- 12.10** **MyChildAtSchool [MCAS] software and app.** Customers who purchase a licence to use the MCAS software and/or the MCAS Parent App (from Google, Apple or other media) should be aware that the use of this software by both the Customer (school) and Parent is subject to "Terms and Conditions for Users of the MyChildAtSchool.com website" a copy of which document is available on the MCAS website.
- 12.11** As a Customer that has purchased a licence to use the MCAS product, you are referred to as the 'Partner School' in the above named terms and conditions. You agree that users of MCAS are subject to the MCAS terms and conditions as amended from time to time by Bromcom. As the Partner School you are also able to impose further terms and conditions of use of the MCAS website in so far as those further terms and conditions do not conflict with the Bromcom MCAS terms and conditions.
- 12.12** Bromcom charges transaction fees to the Partner School for use of the on line payment service within MCAS. These fees are as advertised by the Company and will usually consist of a charge which is a percentage of the transaction value plus a per transaction charge. The fees are deducted from the price of the products or services purchased via the on line payment facility. The Customer/Partner School is notified as soon as a payment is received from a parent/guardian/Registered User of MCAS.
- 12.13** On line payments using this process are paid to the Partner School weekly, currently on Thursday, although this is subject to change. Any payment using the on line portal is initially collected in a central Company account until a cut-off point at midnight every

Wednesday, although this is subject to change. The payments from the Registered Users of MCAS (parents & guardians) are then transferred to the Partner School's bank.

- 12.14** Should an on line payment transaction be disputed or should any other kind of error occur, the MCAS user on line payment account may be suspended while an investigation takes place. The Company reserves the right to suspend the Customer/Partner School's use of the on line payment module in the case of any dispute or error.
- 12.15** Users of the MCAS app may use the app free of charge subject to filtered advertisements being displayed. Subject to the payment of a recurring fee, no advertisements will be displayed. Should the Customer wish to use push notification messages to specific parents or groups of parents there is a recurring fee.
- 12.16** **Teacher app.** Users of the teacher app may use the app free of charge subject to filtered advertisements being displayed. Subject to the payment of a recurring fee, no advertisements will be displayed. Should the Customer wish to use push notification messages to specific teachers or groups of teachers there is a recurring fee.
- 12.17** **Bromcom email service.** If the Bromcom email service is made available to a Customer there is a maximum sending limit of 3000 messages per month; although further messages may be sent at an additional cost to the Customer.

13. PATENT, IPR, COPYRIGHT & CONFIDENTIALITY

- 13.0** **Intellectual Property Rights.** Bromcom warrants that Bromcom and/or its licensors are the owners of the copyright and other intellectual property rights in Software and documentation. In the event of any claim against the Customer that the normal use or possession of all or any part of Software infringes the intellectual property rights of any third party, then Bromcom is to be promptly notified of same by Customer in as much detail as possible, and given control of any such claim by Customer, and Customer shall give Bromcom such full and prompt assistance as Bromcom may reasonably require to oppose or settle any such claim at Bromcom's expense.
- 13.1** Bromcom and/or its licensors shall endeavour to settle or oppose any such claim and/or if necessary make such changes to Software as may avoid or defeat the claimed infringement. Bromcom shall, however, at all times use reasonable endeavours to provide Customer with a fully operational and functionally equivalent Software. The foregoing states the entire liability of Bromcom to Customer in respect of any infringement or alleged infringement by the Bromcom Software of the intellectual property rights of any third party. Bromcom reserves the right at any time to replace or change all or any part of Software in order to avoid infringement or alleged infringement of the intellectual property of any third party. Customer shall indemnify and hold Bromcom harmless from any claim caused by or arising from any unauthorised modification or misuse of Software and/or documentation by Customer, its servants, agents or sub-contractors.
- 13.2** The copyright and all other intellectual property rights of whatever nature (existing now or in the future) in Software and documentation and all copies thereof are and shall remain the property of Bromcom and/or its licensors. Further, Customer acknowledges that "Bromcom" is a registered trademark of Bromcom and shall not be used by the Customer in any way. Customer shall notify Bromcom if Customer becomes aware of any unauthorised use of the whole or any part of Software and documentation and/or the 'Bromcom' trademark by any person. Customer will permit Bromcom to check the use of Software and documentation by Customer from time to time and for that purpose Bromcom and/or its licensors shall be entitled to enter the Customer Site subject to complying with Customer's reasonable safety and security restrictions.
- 13.3** **Confidentiality.** Customer undertakes to treat as confidential and keep secret all information covered or embodied in Software, documentation, data migration, installation,

training and any other services provided hereunder and not to disclose the same in whole or in part to any third party without the prior written consent of Bromcom, save as necessary for legal or auditing purposes. In addition each party shall keep confidential all information obtained from the other pursuant to this Agreement and shall not divulge such information to any third party without the other's prior written consent save as required by law, except that Bromcom shall be entitled to disclose such information received from Customer as is reasonably necessary for its performance under this Agreement, and save that the obligation of confidentiality shall not apply to information which is: i) in or comes into the public domain otherwise than by breach hereof by the receiving party; and/or ii) already in the possession of the receiving party prior to such disclosure; and/or iii) received from a bona fide third party free of restrictions. The foregoing obligations as to confidentiality shall remain in full force and effect notwithstanding any termination of this Agreement howsoever arising.

13.4 The information disclosed to the Customer by Bromcom in the course of this sale and thereafter, including the disclosure of information in any tender document, is strictly confidential. The contents of Bromcom's pre and post-sale documents, including replies to tenders, are price sensitive and in addition the subject matter of these documents or tenders are products which are technologically innovative. For these reasons Bromcom considers that such information, including any tender and its contents, is strictly confidential and should not be disclosed to third parties. Please refer in writing any requests to disclose such information to the Company Secretary of Bromcom at its registered address giving full details of any disclosure request. The foregoing obligations as to confidentiality shall remain in full force and effect notwithstanding any termination of this Agreement howsoever arising.

13.5 Security and Control. Customer shall during the continuance of the Agreement take all reasonable measures to safeguard the Software and documentation from access or use by any unauthorised person. Customer agrees to hold all sensitive information relating to Bromcom Products (including without limitation training literature, other documentation etc.) in confidence and not to divulge to any third party. Customer shall promptly provide Bromcom with full details of any actual or proposed claim or threatened claim concerning alleged infringement of copyright, trademark, intellectual property rights, patent etc. by Bromcom or associated companies that it is aware of and before the commencement of any such proceedings in accordance with the provisions of this section 13.

14. GENERAL

14.0 Customer entering into a contract with Bromcom makes a binding commitment and Bromcom is entitled to see the Customer fulfil the contract.

14.1 This Agreement including the Software licence(s) referred to in section 4 represent the entire Agreement of the parties concerning their respective subject matter and (without limitation) shall prevail over any terms and conditions contained or referred to in Customer's order or in correspondence between Customer and Bromcom or in Bromcom's published literature, save as specified in the Order Acknowledgement.

14.2 All prior agreements and commitments and all other warranties and obligations (whether statutory or in contract or tort of any other kind and whether express or implied) are superseded and cancelled. This contract supersedes all or any prior contracts or agreements, written or oral. This Agreement constitutes the entire agreement between Bromcom and Customer as to the subject matter hereof superseding all prior communications, representations and agreements relating hereto and Customer hereby acknowledges that no reliance is placed

on any communication, representation or agreement written or oral made but not embodied in this Agreement.

- 14.3** From time to time Bromcom will issue updates to these Standard Terms & Conditions. The most recently issued version is the current version, is applicable at all times and is available on application to the Company Secretary and/or on the Bromcom website at www.bromcom.com/terms. Upon any or further purchases by the Customer (including at the point of invoicing for annual maintenance charges) Bromcom will notify the Customer that the current version of the Standard Terms and Conditions apply. If within 14 days of such notification a Customer has reason to request clarification of or object to any changes in the Standard Terms and Conditions, the Customer should contact the Company Secretary in writing with full details of any query. Provided that the query is received within 14 days the Company will in consultation with the Customer address the query. In the case of failure of the Company and the Customer to agree upon a satisfactory outcome both parties agree to submit to a mediation process, funded by the respective parties.
- 14.4** No person has authority to agree or give any variation or addition on behalf of Bromcom in relation to this Agreement unless he is a director of Bromcom, and any representation which constitutes variation from these conditions made by or on behalf of Bromcom shall not have any force or effect whatsoever unless expressly agreed thereto in writing. The Company reserves the right to vary these terms by posting the updated edition at the web address www.bromcom.com/terms or by notifying the Customer by alternative means. Your continued use of the Products constitutes your acceptance of any such variation.
- 14.5** Each of Bromcom's rights under this Agreement is additional to any other rights it may have under this Agreement or by statute, common law or otherwise. An effective waiver by Bromcom of any of its rights under this Agreement shall not constitute waiver of any other right. To be effective, a waiver must be in writing specifying the right so waived and signed by a director of Bromcom. In particular, delay by Bromcom in enforcing any of its rights shall not constitute a waiver of that or any other right or any other breach of that right, nor otherwise prevent Bromcom from enforcing them, and exercise of any right shall not prevent exercise of any other right in respect of the same or any other matter.
- 14.6** Any forbearance relaxation or other indulgence which may be granted by the Company shall not affect the strict rights of the Company under this Agreement.
- 14.7** Failure by either party to enforce at any time any provision of this Agreement shall not affect its rights to later require complete performance by the other party nor shall any specific waiver of a breach of a provision be taken or held to affect its rights in the event of any subsequent or additional breach of the same or any other provision.
- 14.8** Bromcom will use all reasonable endeavours to meet any dates it has given to Customer in terms of delivery, installation, configuration etc., but time shall not be of the essence. In the event of dates slipping, Bromcom will inform the Customer thereof as soon as reasonably practicable.
- 14.9** If any term of these Conditions is illegal or unenforceable for any purpose then the other provisions shall remain in full force and effect, and the Agreement shall be read and construed for such purpose as if such term had not been included. Bromcom and the Customer shall agree in good faith a replacement provision as closely equivalent as possible which is legal and enforceable.
- 14.10** The sections, headings, etc. to this Agreement are for convenience only and shall not be taken into account in construing it.
- 14.11** For references to the singular include the plural and vice versa. For references to any gender include each other gender. For reference to persons include individuals, bodies

corporate, un-incorporated associations, partnerships and other legal entities. Reference to clauses are to provisions of these conditions.

- 14.12** Bromcom shall be entitled to assign all or any of its rights and/or obligations under this Agreement, and references to Bromcom shall be deemed to include its successors and assigns. Bromcom shall be entitled to subcontract or sub-let any part of this Agreement but such shall not affect Customer's rights hereunder.
- 14.13** Customer shall neither assign this Agreement nor part with any rights or obligations hereunder in any way whatsoever whether in whole or in part without the prior written agreement of Bromcom and/or the Assignee if there has been an assignment.
- 14.14** Bromcom shall not be liable to Customer and shall not be or be deemed to be in default by reason solely of any delay or failure in its performance under the Agreement resulting from causes beyond its reasonable control (including without limitation employee disputes, failure of contractors and suppliers, transportation difficulties and government action) provided that Bromcom has used all reasonable efforts to mitigate their consequences, on the basis that in the case of scarcity of resources Bromcom may allocate its resources between third parties to whom it has obligations in such manner as it may in good faith determine. Any time period for any performance by Bromcom shall be increased by the period of such delay or failure affecting that performance.
- 14.15** Neither party shall be liable for any delay or breach in performing its obligations hereunder, nor any loss or damage arising there from, if such delay or breach is caused by circumstances beyond its reasonable control.
- 14.16** Except in respect of personal injury or death caused by the negligence of Bromcom, its servants, agents, or contractors (for which by law no limit applies) the liability of Bromcom hereunder shall be limited to correcting Software as provided herein and to providing services in the case of Customer providing Bromcom with full details of any actual or proposed claim or threatened claim concerning the Company's intellectual property rights.
- 14.17** Except as expressly provided in this Agreement no warranty, condition, undertaking or term, expressed or implied, statutory or otherwise as to the condition, quality, performance, merchantability, or fitness for purpose of Software and Documentation and/or any services provided hereunder or any part thereof shall be assumed by Bromcom and except as expressly provided in this Agreement all such warranties, conditions, undertaking and terms are hereby excluded.
- 14.18** Notwithstanding any other provisions of this Agreement in no event shall either party be liable to the other for any incidental, special, indirect or consequential loss of whatever nature, including but not limited to loss of use and/loss or profits and/or loss or spoiling of data, howsoever caused, whether occurring in contract, tort, negligence or otherwise, save that Customer shall be responsible for its actions if it endangers Bromcom's right of ownership in the Software.
- 14.19** Notices (except for termination notices) given under this Agreement shall be in writing and shall be duly served if delivered personally or sent by email or letter or facsimile transmission to the other party at such email, postal, facsimile other address as may have been notified by either party for this purpose to the other party.
- 14.20** Any termination notices to be given under this Agreement shall be in writing and shall be duly served if delivered personally or sent by recorded delivery post to the other party at its address specified in the Order Acknowledgement or at such other address as it may have notified for the purpose to the other party. Notices so addressed, marked and sent shall be deemed to have been received, if sent by post, on the next working day. All formal notices shall be given by prepaid first class post, or facsimile confirmed by prepaid posted letter, to Bromcom

or the Customer at such address as shall have for the time being been notified to the other party. Termination notices from Customer to Bromcom concerning the termination of a contract shall be written, on the school/academy headed paper, and signed by the head teacher.

- 14.21** Non-Solicitation. Customer will not entice or accept any solicitation for employment from Bromcom staff or its sub-contractors or its agents without prior written agreement from Bromcom. Further, the Customer shall not without the prior written consent of the Company, for the duration of this Agreement and for a period of two years after its termination, howsoever caused, directly or indirectly employ on any basis, including via another agent or agency, or as a contractor, any employee, ex-employee, sub-contractor or agent of the Company. If any such member or ex-member of Bromcom staff (including sub-contractors or agents), introduced by the Company or any of the Company's staff or sub-contract personnel, shall be offered and accept a position with the Customer or with any individual, firm or company associated with the Customer, the Customer shall forthwith pay a fee calculated as 200% of the gross annual salary of the employee or total payment in a year for the sub-contractor or agent in question.
- 14.22** Bromcom is in full compliance with the General Data Protection Regulation (GDPR) and a separate document is available which sets out the Company's compliance with the Regulation together with the Company's Privacy statement. By the fact that a Customer has contractually engaged Bromcom to provide Product, including the Management Information System software and/or services, Bromcom takes this action as an unambiguous consent by the Customer that Bromcom shall process the personal data collected by that Customer who is a Data Controller under the Regulation.
- 14.23** Under the Waste Electrical, Electronic Equipment Regulations (WEEE) any Electrical, Electronic Equipment (EEE) placed on the market by Bromcom prior to 13 August 2005 is not the responsibility of Bromcom in terms of treatment, reprocessing and environmentally sound disposal, except in special circumstances defined by those regulations. EEE placed on the market on 13 August 2005 or thereafter and decommissioned after 1 July 2007 can be recycled via Bromcom's waste recycler, as registered with the Government Environment Agency's 'Producer Compliance Scheme'. Details of Bromcom's current waste recycler are available on the Bromcom web site www.bromcom.com or on application to the Company Secretary.
- 14.24** This Agreement shall be deemed to be made in England and shall be subject to and construed in accordance with English Law and if any provision of this Agreement is held by any court or other competent authority to be unenforceable in whole or in part, this Agreement shall continue to be valid as to the other provisions thereof and the remainder of the affected provision. This Agreement does not affect the Customer's statutory rights.