

**Giglets TLC Access Licence
Version: 12 November 2014**

The Customer's attention is particularly drawn to the provisions of clause 10.

1. Interpretation

1.1. **Definitions.** In these Conditions, the following definitions apply:

"Authorised Users" means Teachers and Pupils who are authorised by the Customer to access the Portal in accordance with the Contract;

"Business Day" means a day (other than a Saturday, Sunday or public holiday) when banks in Glasgow are open for business;

"Charges" means the charges payable by the Customer for access to the Portal as set out in the Order and payable in accordance with clause 6;

"Commencement Date" has the meaning set out in clause 2.2;

"Conditions" means these terms and conditions as amended from time to time in accordance with clause 14.7;

"Contract" means the contract between the Supplier and the Customer relating to access to the Portal in accordance with these Conditions;

"Customer" means the person or entity being a school which purchases access to the Portal under the Contract;

"Data Controller" has the meaning given to it in section 1(1) of the DPA;

"Data Processor" has the meaning given to it in section 1(1) of the DPA;

"DPA" means the Data Protection Act 1998 as amended and updated from time to time, including any subordinate legislation issued pursuant thereto;

"EULA" means the end user licence agreement which Authorised Users are required to adhere to whilst accessing the portal, a copy of which shall be provided by the Supplier to the Customer on request;

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

"Order" means the Customer's order for access to the Portal as set out in an order form or communicated by the Customer to the Supplier verbally or otherwise in writing (including by email);

"Personal Data" has the meaning given to it in section 1(1) of the DPA;

"Portal" means the Supplier's portal currently called "The Learning Cloud (TLC)" which contains interactive electronic educational content;

"Process" and **"Processing"** have the meaning given to them in section 1(1) of the DPA;

"Pupils" means pupils who are registered to attend and are attending the Customer's school;

"Schedule" means the schedule in two parts attached as relative to these Conditions;

"Secure Network" means a network where access is on a unique user basis enabled through a password known only to the user and which is secure;

"Specification" means the description or specification of the Portal provided in writing by the Supplier to the Customer;

"Supplier" means Giglets Limited, a company registered in Scotland with company number SC395574 of 44 Bank Street, Kilmarnock, East Ayrshire KA1 1HA;

"Supplier Materials" has the meaning set out in clause

5.1.14;

"Teachers" means persons qualified to provide teaching services who are providing teaching services for the Customer at the Customer's school, including the head teacher; and

"Term" has the meaning set out in clause 11.1.

1.2. **Construction.** In these Conditions, the following rules apply:

1.2.1. a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.2.2. a reference to a party includes its personal representatives, successors or permitted assigns;

1.2.3. a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision;

1.2.4. any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

1.2.5. a reference to **writing** or **written** includes e-mail but not fax.

2. Basis of contract

2.1. The Order constitutes an offer by the Customer to purchase access to the Portal during the Term in accordance with these Conditions.

2.2. The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order (which may be constituted by the Supplier issuing an invoice) at which point and on which date the Contract shall come into existence ("**Commencement Date**").

2.3. The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

2.4. Any descriptive matter or advertising material issued by the Supplier (on its website or otherwise) is issued or published for the sole purpose of giving an approximate idea of the Portal. They shall not form part of the Contract or have any contractual force.

2.5. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.6. Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

3. Grant of Licence

3.1. The Supplier grants the Customer a non-exclusive, non-transferable licence to permit Authorised Users to access the Portal via a Secure Network for the Customer's internal educational purposes during the Term only. The Customer may create profiles for Teachers and Pupils in the Portal and permit Teachers to create profiles for Teachers and Pupils in the Portal in accordance with the licence granted in this clause 3.

3.2. Where a maximum number of Authorised Users has been specified in the Order the Customer shall ensure that the number of Authorised Users it permits to access the Portal does not exceed this number.

4. Supplier's Rights and Obligations

4.1. The Supplier shall use reasonable endeavours to ensure that the Portal operates properly at all times, excluding:

4.1.1. time during which planned maintenance (as notified by the Supplier to the Customer) is being carried out;

4.1.2. times for unscheduled maintenance to be carried out, provided that the Supplier has used reasonable endeavours to give the Customer notice of such unscheduled maintenance; and

- 4.1.3. downtime attributable to failure of the Supplier's suppliers or subcontractors.
- 4.2. The Supplier will provide the Customer with a contact telephone number and email address through which the Customer can submit support requests relating to the Portal during the hours of 08:00 to 18:00 on Business Days only. The Supplier shall respond to such requests within a reasonable timeframe and will use reasonable endeavours to resolve any reported issues.
- 4.3. The Customer acknowledges that from time to time during the Term, the Supplier may apply upgrades to the Portal, and that such upgrades may result in changes to the appearance and/or functionality of the Portal.
- 4.4. The Supplier may make changes to the content of the Portal (including the addition and/or removal of content) from time to time.
- 5. **Customer's obligations**
- 5.1. The Customer shall:
 - 5.1.1. keep its details (including login details and passwords) for access to the Portal confidential;
 - 5.1.2. procure that Authorised Users comply with the EULA;
 - 5.1.3. effectively communicate to Authorised Users:
 - 5.1.3.1. the data protection statements contained within parts 1 and 2 of the Schedule in accordance with clause 6;
 - 5.1.3.2. the purpose for which Authorised Users may use the Portal (being internal educational purposes only);
 - 5.1.3.3. what constitutes inappropriate or unauthorised use of the Portal (including any use which is prohibited by the EULA);
 - 5.1.4. be responsible for the actions of Authorised Users and any Authorised User's breach of the EULA;
 - 5.1.5. ensure that Authorised Users keep any login details and passwords confidential;
 - 5.1.6. ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time and also that it is properly maintained during the Term;
 - 5.1.7. require and procure that any computers or devices used in connection with the Portal meet all relevant technical specifications required to use the Portal;
 - 5.1.8. use all reasonable endeavours to prevent any unauthorised access to, or use of, the Portal and in the event of any such unauthorised access or use, promptly notify the Supplier;
 - 5.1.9. ensure that the terms of the Order are complete and accurate;
 - 5.1.10. co-operate with the Supplier in all matters relating to the Contract;
 - 5.1.11. provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises and other facilities as reasonably required by the Supplier to perform its obligations under the Contract;
 - 5.1.12. provide the Supplier with such information and materials as the Supplier may reasonably require in relation to the Contract (including information which the Supplier requires to grant access to the Portal) and ensure that such information is accurate in all material respects;
 - 5.1.13. obtain and maintain all necessary licences, permissions and consents which may be required in relation to the Contract;
 - 5.1.14. keep and maintain all materials, documents, written instructions and other property of the Supplier ("**Supplier Materials**") at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.
- 5.2. The Customer acknowledges that the Customer is responsible for overseeing, monitoring and moderating:
 - 5.2.1. use of the Portal by Pupils; and
 - 5.2.2. all material submitted by Pupils to the Portal;

and the Customer shall immediately remove from the Portal any material submitted by a Pupil which is inappropriate or otherwise breaches the terms of the EULA.

- 5.3. If the Customer becomes aware (or should have become aware) that the Portal has been used by an Authorised User inappropriately or otherwise in breach of the EULA the Customer shall immediately notify the Supplier and delete the profile of such Authorised User and ensure that they do not in the future access the Portal unless otherwise agreed by the Supplier.
- 5.4. If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):
 - 5.4.1. the Supplier shall without limiting its other rights or remedies have the right to rely on the Customer Default to relieve it from the performance of any of its obligations under the Contract;
 - 5.4.2. the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 5.4; and
 - 5.4.3. the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.
- 6. **Charges and payment**
- 6.1. The Supplier shall be entitled to invoice the Customer on the Commencement Date. The Supplier shall not be required to grant the Customer access to the Portal in accordance with clause 3.1 until payment of the Charges have been received in full.
- 6.2. The Customer shall pay each invoice submitted by the Supplier:
 - 6.2.1. within 30 days of the date of the invoice;
 - 6.2.2. in full and in cleared funds to a bank account nominated in writing by the Supplier, and
 - 6.2.3. time for payment shall be of the essence of the Contract.
- 6.3. All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being ("**VAT**"). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT.
- 6.4. If the Supplier does not receive payment of the Charges or of the Customer breaches any term of the Contract the Supplier may temporarily disable the Customer (and its Authorised Users') passwords, account and access to all or part of the Portal and the Supplier shall be under no obligation to provide access to the Portal while the payments concerned remain unpaid. If such amounts remain unpaid for one (1) month or more the Supplier may delete the Customer's account (which for the avoidance of doubt shall include deletion of Authorised Users' profiles) and upon deletion the Contract shall terminate.
- 6.5. Without limiting its other rights and remedies, if the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per cent per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 6.6. The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim,

deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

7. Intellectual property rights

- 7.1. All Intellectual Property Rights in the Portal (and the content in the Portal) are and shall remain the property of the Supplier or its third party licensors. The Customer shall procure that Teachers assign all Intellectual Property Rights in content they submit to the Portal to the Supplier.
- 7.2. The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.
- 7.3. All Supplier Materials are the exclusive property of the Supplier.

8. Data Protection

- 8.1. The Customer acknowledges and agrees that for the purposes of the DPA, the Supplier shall be the Data Processor and the Customer shall be the Data Controller of any Personal Data that Authorised Users upload to the Portal ("**Portal Personal Data**"), including but not limited to documents, video, image and audio files. As Data Processor, the Supplier shall:
 - 8.1.1. only Process Portal Personal Data strictly in accordance with the Customer's instructions and the DPA; and
 - 8.1.2. put in place appropriate technical and organisational processes and procedures to safeguard against any unauthorised and unlawful Processing of, and against accidental loss or destruction of, or damage to, the Portal Personal Data.
- 8.2. Where an Authorised User of the Portal is a Teacher, the Customer shall use all reasonable endeavours to effectively communicate to the Teacher the data protection statement contained within part 1 of the Schedule to these Conditions.
- 8.3. Where an Authorised User of the Portal is a Pupil, the Customer shall use all reasonable endeavours to effectively communicate to the Pupil the data protection statement contained within part 2 of the Schedule to these Conditions and shall only allow the Pupil access to the Portal if the consent of the parent or guardian of the Pupil has been obtained prior to allowing the Pupil to access the Portal.
- 8.4. The Customer acknowledges that the Supplier may review the Portal Personal Data from time to time and use some or all of the Portal Personal Data for purposes related to the Supplier's business. In the event that the Supplier does so, the Customer acknowledges that the Supplier shall become the Data Controller of any such Portal Personal Data and shall use the Portal Personal Data for the purposes set out within the data protection statements contained within parts 1 and 2 of the Schedule.

9. Confidentiality

The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Supplier, its employees, agents or subcontractors, and any other confidential information concerning the Supplier's business, its products and services which the Customer may obtain. The Customer shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the Customer's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract.

The Supplier may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 9 shall survive termination of the Contract.

10. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 10.1. Nothing in these Conditions shall limit or exclude the Supplier's liability for:
 - 10.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; or
 - 10.1.2. fraud or fraudulent misrepresentation.
 - 10.2. Subject to clause 10.1:
 - 10.2.1. the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, delict (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - 10.2.2. the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, delict (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the average annual amount of the Charges payable by the Customer.
 - 10.3. The Supplier does not guarantee that any content made available through the Portal is accurate, complete or error free. The Customer undertakes not to rely upon any content made available in the Portal. Any reliance the Customer places upon the Portal or the content made available in the Portal is entirely at the customer's own risk and the Customer undertakes not to hold the Supplier liable for any loss, cost, damage or expense incurred as a result of such reliance.
 - 10.4. The Supplier does not guarantee that the Portal will be free of errors or defects or operate in an uninterrupted manner.
 - 10.5. The Supplier does not guarantee that the Portal will not interfere with the performance or operation of the computer or device through which it is accessed or other software installed thereon or peripherals connected thereto (and any software installed on said peripherals).
 - 10.6. The Supplier does not guarantee that the Portal will be free of viruses or other malicious code.
 - 10.7. The Supplier does not guarantee that the Portal is suitable for any particular purpose or that it will meet the Customer's requirements, irrespective of whether that purpose or those requirements are known to the Supplier.
 - 10.8. Other than as expressly stated hereunder the Supplier excludes all guarantees, warranties, conditions and representations whether express or implied.
 - 10.9. This clause 10 shall survive termination of the Contract.
- #### 11. Term and Termination
- 11.1. This Contract shall, unless otherwise terminated as provided for in the Contract, commence on the Commencement Date and continue for the period set out in the Order (the "**Initial Term**") and thereafter shall automatically renew for successive periods of one (1) year (each a "**Renewal Period**") (the Initial Term and the Renewal Period together being the "**Term**") unless and until terminated by either party giving to the other at least three (3) months written notice to expire at the end of the Initial Term or any subsequent Renewal Period.
 - 11.2. Without limiting its other rights or remedies, the Supplier may terminate the Contract by giving the Customer thirty (30) days written notice at any time following which the Supplier shall repay to the Customer on a pro rata basis any Charges paid in advance by the Customer relating to the period after

- the date of termination.
- 11.3. Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 11.3.1. the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within thirty (30) days of that party being notified in writing to do so;
- 11.3.2. if the other party ceases to do business or becomes insolvent or an order is made or a resolution passed for the winding up of it or an order is made for the appointment of an administrator to manage its affairs business or property, or a receiver is appointed of its assets or undertakings or circumstances arise which entitle the Court or a creditor to appoint a receiver or manager or which entitle the Court to make a winding up order, or it suffers any similar or analogous action in consequence of debt.
- 11.4. Without limiting its other rights or remedies (including without limitation those in Clause 6.4), the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment and fails to pay all outstanding amounts within 30 days after being notified in writing to do so.
- 12. Consequences of termination**
- 12.1. On termination of the Contract for any reason:
- 12.1.1. all rights and licences granted under the Contract shall immediately terminate and the Customer shall ensure that Authorised Users cease accessing the Portal immediately;
- 12.1.2. the Customer shall permanently erase its login details and password and the login details and passwords of Authorised Users;
- 12.1.3. the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest;
- 12.1.4. the Customer shall return all of the Supplier Materials in its possession or under its control. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- 12.1.5. the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- 12.1.6. clauses which expressly or by implication survive termination shall continue in full force and effect.
- 13. Force majeure**
- 13.1. For the purposes of this Contract, "**Force Majeure Event**" means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 13.2. The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 13.3. If the Force Majeure Event prevents the Supplier from performing any of its obligations for more than four (4) weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

14. General

14.1. Assignment and other dealings.

14.1.1. The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

14.1.2. The Customer shall not, without the prior written consent of the Supplier, assign, transfer, mortgage, charge, subcontract, or deal in any other manner with any or all of its rights or obligations under the Contract.

14.2. Notices.

14.2.1. Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid registered first class post or other recorded next working day delivery service, commercial courier, or e-mail.

14.2.2. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 14.2.1; if sent by recorded pre-paid first class post or other recorded next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by e-mail, one Business Day after transmission provided that the sender does not receive a notification that delivery has been unsuccessful.

14.2.3. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

14.3. Severance.

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

14.3.2. If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

14.4. **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

14.5. **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

14.6. **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

14.7. **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the

Supplier.

- 14.8. **Governing law.** This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the laws of Scotland.
- 14.9. **Jurisdiction.** Each party irrevocably agrees that the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).