

Unity Schools Partnership Education Ltd
Park Road
Haverhill
Suffolk
CB9 7YD



01 September 2023




The terms and conditions should be read in full to ensure you, as the Customer, understand the conditions associated with the CUSP provision (and any other associated subject Curriculum Materials). It covers all contractual obligations, including, but not limited to:

- Agreement by the Customer that CUSP Materials are only to be used by staff employed by the school(s) for which the subscription was purchased, not by other schools that may be part of the same MAT or Trust.
- Agreement by the Customer to undertake at least termly due diligence of their Authorised Users and remove access to the Curriculum Materials from any staff member who is no longer employed by the Customer or who no longer requires access to the Curriculum Materials for any reason.

- Agreement that the Customer will not publish or distribute CUSP resources online or in any digital or paper format.
- The CUSP website (www.unity-curriculum.co.uk) will provide access to all Learning Modules, CPD and Book Studies. Access is restricted to staff at the school(s) for which the subscription was purchased only.
- CUSP resources are designed to support and improve teaching and learning. We do not claim the resources alone will improve outcomes. You need great teaching and excellent resources to improve outcomes.
- Clauses covering:
 - Payment terms and annual subscription payments;
 - Termination;
 - Intellectual Property and ownership of the Curriculum Materials.

UNITY SCHOOLS PARTNERSHIP EDUCATION LTD

HEADLINES TO SHARE IN YOUR SCHOOL:

 YOU CAN	 YOU CAN'T
<ul style="list-style-type: none"> ✓ Download and use the CUSP resources to teach with, only in the school subscribed to do so ✓ Print out and use the Knowledge Organisers (KOs), Knowledge Notes (KOs) and Vocabulary resources (VR) with children in your school either in paper or digital form ✓ Use images and diagrams from the CUSP Resource pages with children as scaffolds and cues to provoke learning ✓ Download and make reasonable adjustments to the Knowledge Notes for pupils who need additional support ✓ Use the CUSP Socrative quizzes in digital or paper form with pupils to bring about retrieval practice and assessment opportunities ✓ Access the CUSP Core resources – handbooks and videos for CPD ✓ Download assessment templates to support teachers at the subscribing school to better understand pupil development ✓ Remove users who no longer work at the school ✓ Publish the yearly long-term sequence as that is a duty of governors. ✓ Publish and share examples of pupil work on social media and your website only if CUSP is directly referenced 	<ul style="list-style-type: none"> X Share CUSP resources beyond the subscribing school or with other educational providers X Publish CUSP resources, such as the KOs, KNs and VR on public facing websites or through non-secure links that are freely available to internet users X Publish extracts of pupil work or screen shots of images from our resources without explicitly referencing CUSP X Use the CUSP Resource images on other websites or public facing platforms, such as WordWall or with other educational providers X Give user access to CUSP to people who are not employed at the school, such as independent or local authority consultants on a fee by fee or short-term contracts regardless of the length of time they have worked with the school X Distribute or share the CUSP CPD videos / handbooks to non-subscribing schools or with other educational providers X Distribute or share the CUSP Example lesson plans beyond the school or with other educational providers <div style="text-align: right; margin-top: 20px;">  </div>

TERMS OF SERVICE

BETWEEN

UNITY SCHOOLS PARTNERSHIP EDUCATION LTD incorporated and registered in England and Wales with company number 12709238 whose registered office is at Unity Schools Partnership Offices, Park Road, Haverhill, Suffolk, England, CB9 7YD ("**USPE**") and the organisation purchasing the Curriculum Materials identified in the Contract Letter (the "**Customer**"),

each a "**Party**" and together the "**Parties**".

BACKGROUND

- (A) **Unity Schools Partnership (USP)** is responsible for a number of special free schools and primary and secondary academies predominantly in Suffolk and now also in Cambridgeshire, Essex and the London Borough of Havering. It aims to develop local clusters of interdependent, self-sustaining outstanding schools that develop successful learners, confident individuals and responsible citizens.
- (B) As part of this mission, **USP** has developed the Curriculum with Unity Schools Partnership (**CUSP**). **USP** intends to develop further curricula to cover additional elements of the National Curriculum.
- (C) **USPE** is a wholly-owned subsidiary trading company of **USP** and **USP** has licensed **USPE** to re-sell the Curriculum Materials.
- (D) The Customer wishes to access and use the Curriculum Materials set out in the Contract Letter and **USPE** is prepared to grant such access and use to the Customer on the terms and conditions set out below.

AGREED TERMS-

1. DEFINITIONS

In this Agreement, unless otherwise expressly provided, the following terms shall have meanings ascribed to them below.

"**Additional Subscription**" means an additional subscription for Curriculum Materials which might be purchased by the Customer from time to time as set out in a corresponding Contract Letter.

"**Affiliates**" means: (i) an organisation, which directly or indirectly controls any Party; or (ii) an organisation which is directly or indirectly controlled by any Party; or (iii) an organisation, which is controlled, directly or indirectly, by the ultimate parent company of any Party. "Control" for these purposes means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of any person, or the power to veto major policy decisions of any person, whether through the ownership of shares, by agreement, or otherwise.

"**Agreement**" means the contract between the Customer and **USPE** comprising these terms of service and the Contract Letter.

"**Authorised Users**" means an individual who is authorised by the Customer to have access to the Curriculum Materials and who is a permanent or temporary member of staff of the Customer. Reference to the Customer shall include its Authorised Users.

"**Background IP**" means any IP that is (i) owned or used under licence by any Party before the date of this Agreement or (ii) created by a Party independently of this Agreement.

“Change of Control” shall mean where a person who Controls the Customer ceases to do so or if another person acquires control of the Customer. Control for these purposes shall have the same meaning as it does under the definition for Affiliates.

“Commencement Date” means the date when this Agreement is signed.

“Confidential Information” means the terms of this Agreement and any and all information, data, designs, memoranda, models, prototypes, and/or other material whether of scientific, technical, commercial, financial or other nature (including all reports, specifications, drawings and designs disclosed in writing, via digital or electronic media or other tangible form, orally or by inspection of documents or pursuant to discussions between the parties), where the information is:

- i. by its nature confidential or commercially valuable
- ii. identified as confidential or commercially valuable at the time of disclosure; or
- iii. ought reasonably to be considered confidential or commercially valuable by the recipient given the nature of the information or the circumstances of disclosure

which is furnished to or obtained by a Party from the other Party.

“Contract Letter” means the letter which is issued with and accompanies these terms of service, together with any further letters issued by USPE relating to additional subscriptions for Curriculum Materials which might be paid for by the Customer from time to time.

“Curriculum Materials” includes the “Curriculum with Unity Schools Partnership” (CUSP) together with any other USP curriculum subscription modules which might be licensed to the Customer from time to time by way of an Additional Subscription as set out in a corresponding Contract Letter.

“Fee” means the fee payable for a subscription for Curriculum Materials in accordance with the fee bands published on the CUSP website from time to time and further described in Clause 3.

“Implementation Fee” means the optional fee which is applicable to the Implementation Services, and further described in Clause 3.4.

“Implementation Services” means the optional services provided by USPE, details of which are set out in Clause 6.

“Initial Term” in relation to a subscription for Curriculum Materials other than an Additional Subscription means the period of twelve months from the Commencement Date. In relation to an Additional Subscription, **“Initial Term”** shall mean the period set out in the relevant Contract Letter.

“Intellectual Property (IP) Rights” means all patents, utility models, rights to inventions, copyright and related rights, trademarks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (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 whether or not registered or registrable and which subsist or will subsist, now or in the future, in any part of the world.

“Material Breach” shall mean a breach that substantially deprives the non-breaching party of the principal benefit of this Agreement or that causes the non-breaching party to suffer irreparable or significant harm, such as but not limited to: non-payment of fees or a breach of the restrictions listed in Clause 5.19.

“Novation” shall mean a deed of novation which may be entered into between the academy trust to which a Customer belongs and any Successor Trust and if applicable with the Secretary of State for Education under which responsibility for the operation of the Customer shall pass from academy trust to the Successor Trust.

“Renewal Term” means the term described in Clause 2.

“Customer’s Licence” means the licence granted to the Customer and described in Clause 5.6.

“Subscription Fee” shall mean the fee payable by the Customer to USPE during a Renewal Term in accordance with the fee bands published on the CUSP website from time to time and as further described in Clause 3.

“Successor Trust” shall mean any academy trust which may enter into a FA Novation for the operation of the Customer as successor to the academy trust to which the Customer belongs.

“Term” means the Initial Term together with each and every Renewal Term as specified in Clause 2.

“Territory” has the meaning set out in the Contract Letter.

“USP Trade Marks” means the trademarks set out in the Schedule.

- 1.1 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the Schedules.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 This Agreement shall be binding on, and enure to the benefit of, the parties to this Agreement and their respective personal representatives, successors and permitted assigns and references to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.8 A reference to writing or written includes fax and e-mail.
- 1.9 Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.10 References to Clauses and Schedules are to the Clauses and Schedules of this Agreement.
- 1.11 The defined terms used in the Background and Schedules to this Agreement shall have the same meaning as set out in this Clause 1.

- 1.12 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. **COMMENCEMENT AND TERM**

This Agreement shall come into force on the Commencement Date and shall continue for the duration of the Initial Term unless terminated earlier in accordance with the terms of this Agreement. Subject to earlier termination in accordance with the terms of this Agreement, the Agreement shall automatically renew for successive periods of twelve (12) months (each a “**Renewal Term**”) at the end of the Initial Term and on each subsequent anniversary thereafter (the “**Anniversary Date**”) unless USPE receives one full academic term’s notice in writing from the Customer prior to an Anniversary Date that it wishes to terminate the Agreement.

3. **FEES**

- 3.1 Within 7 days following the receipt of the signed Contract Letter, USPE shall send the Customer an invoice for the Fee.
- 3.2 The Fee is payable in accordance with the fee bands published on the CUSP website and terms agreed with the Customer as set out in the Contract Letter.
- 3.3 Thereafter, no earlier than one month in advance of the beginning of each Renewal Term, USPE shall invoice and the Customer shall pay the Subscription Fee for use of the Curriculum Materials during such Renewal Term in accordance with the fee bands published on the CUSP website from time to time.
- 3.4 The Customer may choose to pay the Implementation Fee for the Implementation Services to support its use and integration of the Curriculum Materials. Details of such additional services are contained in Clause 6.
- 3.5 All invoices provided by USPE to the Customer under this Agreement must be paid within 30 days of receipt in accordance with the payment terms contained on the invoice.
- 3.6 Unless otherwise provided, the charges payable under this Clause 3 are exclusive of VAT which shall be included in invoices and payable, if applicable, in addition to any fees.
- 3.7 USPE reserves the right to charge interest on any payment that has not been made by the due date for such payment at the rate of 4% a year above the base lending rate of Barclays Bank from time to time. This interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You must pay such interest together with any overdue amount.

4. **CURRICULUM MATERIALS**

- 4.1 Within 48 hours of receipt of the signed Contract Letter, USPE shall procure that the Curriculum Materials are made available to the Customer via the CUSP website through the school’s nominated account administrator and, if the Customer does not already have an account with USPE will provide the Customer with log-in credentials for the CUSP website.
- 4.2 Access to the CUSP website will be withheld if the Fee or Subscription Fee has not been received by USPE under the payment terms in Clause 3.
- 4.3 USPE may be able to provide some content from the Curriculum Materials through other providers, such as Curriculum Visions. This is subject to an additional annual subscription fee and further details are available from USPE Operations Manager via email - curriculum@unitysp.co.uk .

- 4.4 It is expected that USP will continue to develop and improve the resources and content available through USPE under the Curriculum Materials (“**Improvements**”).
- 4.5 In consideration for payment of the Subscription Fee, USPE shall make Improvements relating to Curriculum Materials for which the Customer has a current subscription available to the Customer during the Term in accordance with the terms of this Agreement. Such Improvements shall be included in the Curriculum Materials for the purpose of this Agreement.
- 4.6 The CUSP website will host the Curriculum Materials together with all updates, Improvements and learning sequence examples and the Customer will have access to such materials for which it has a current subscription via the CUSP website.

5. **INTELLECTUAL PROPERTY RIGHTS**

- 5.1 USPE agrees that if any licences of a third party’s IP are required by the Customer or USPE in the fulfilment of their responsibilities for the purposes of this Agreement, USPE shall be responsible for procuring such licences.

Background IP

- 5.2 Background IP owned by any Party or its licensors will remain the property of that Party or its licensors. All rights, title and interests to Background IP shall remain with the Party introducing or disclosing the same or that Party’s licensors and shall remain unfettered by this Agreement.
- 5.3 Save as provided in this Clause 5, nothing contained in this Agreement shall:
- (a) affect the absolute ownership rights of each Party in all Intellectual Property Rights contained in its Background IP; or
 - (b) act as a grant to any other Party of any right, express or implied, in respect of such Party’s Background IP.
- 5.4 To the extent required for any Implementation Services under Clause 3.4, the Customer hereby grants to USPE the non-exclusive right to use its Background IP for the purposes of providing such Implementation Services during the Term and for no other purpose.
- 5.5 The Curriculum Materials form part of USPE’s Background IP for the purpose of this Agreement and consequently all rights, title and interests to the Intellectual Property Rights in the Curriculum Materials are owned exclusively by and remain with USPE and its licensors.

Customer’s licence

- 5.6 In consideration of the Fee paid by the Customer under Clause 3, USPE hereby grants to the Customer a non-exclusive licence under the Intellectual Property Rights in the Curriculum Materials together with any USPE Background IP for the purpose set out in Clause 5.7 in the Territory in accordance with the terms of this Agreement (the “**Customer’s Licence**”).
- 5.7 The Customer’s Licence granted herein to the Customer under the Intellectual Property Rights in the Curriculum Materials and in the USPE Background IP is limited to use by the school(s) for which the subscription was purchased in connection with education, teaching, distance learning, private study and/or research including the right to make and distribute copies of resources provided as part of the Curriculum Materials to pupils of such school(s). The Customer shall make use of the rights granted to it under this Agreement for its own benefit only and not for the benefit of any other individual or entity or any other school including, for the avoidance of doubt, any school that belongs to the same Multi-Academy Trust operated by the Customer, unless otherwise agreed in writing with USPE.
- 5.8 USPE warrants that it is entitled to grant the Customer’s Licence.

- 5.9 The Customer shall not challenge USPE's or USP's entitlement to the Intellectual Property Rights in the Curriculum Materials.
- 5.10 The Customer shall not undertake or allow to be undertaken (to the extent it is within the power and control of the Customer) any act which might damage or prejudice any of the Intellectual Property Rights in the Curriculum Materials or the reputation of USPE or USP.
- 5.11 If the Customer pays for the Implementation Services and in the course of delivery of such Implementation Services the Customer creates or implements any amendments or improvements to the Curriculum Materials which give rise to new Intellectual Property Rights, such Intellectual Property Rights are hereby assigned by the Customer to USPE by way of present assignment of future rights and with full title guarantee and are hereby licensed by USPE back to the Customer as part of and on the terms of the Customer's Licence.
- 5.12 USPE further grants the Customer a non-exclusive, non-transferrable, royalty-free licence to use the USP Trade Marks for the purpose of making it clear that the Curriculum Materials belong to USP and are being used under licence, provided such use is in accordance with any reasonable instructions given to the Customer by USPE from time to time (including any branding guidelines).
- 5.13 Use of the USP Trade Marks by the Customer must further be accompanied by the following wording, "Unity Schools Partnership, and its logo, are trademarks of Unity Schools Partnership (Registered Company No: 07400386) and used under licence".
- 5.14 If either USPE or the Customer shall become aware of any infringement in relation to the Intellectual Property Rights in the Curriculum Materials or the USP Trade Marks (an "**Infringing Act**") then such party shall promptly give written notice of such infringement to the other.
- 5.15 Where an Infringing Act relates to the Customer's own breach of the terms of this Agreement, the Customer undertakes to investigate fully and use all reasonable efforts to ensure that such activity ceases forthwith and to prevent any recurrence. The Customer shall be liable to USPE for any damage to the Intellectual Property Rights in the Curriculum Materials or the USP Trade Marks arising from any breach by the Customer of this Clause 5.15.
- 5.16 USPE and/or USP shall have conduct of all claims and actions in relation to an Infringing Act. The Customer shall allow USPE and/or USP to conduct any negotiations or litigation or to settle any claims or actions in relation to an Infringing Act and the Customer shall give USPE and/or USP all reasonable assistance and information in connection with such actions, claims, negotiations, litigation or settlements at USPE's request and at the reasonable expense of USPE including for the purpose of enabling USPE and/or USP to assess any claim and its impact on USPE and/or USP. USPE and/or USP shall be entitled to retain all awards, judgments and benefits resulting from any action taken by it under this Clause 5.16.
- 5.17 In the event that USPE and/or USP decides not to instigate a suit to restrain an Infringing Act, nothing in this Agreement shall prevent the Customer from instigating proceedings to restrain such Infringing Act save that the Customer shall do so at its own cost and expense (but shall be entitled to retain all awards, judgements and benefits in such case). USPE shall give at the Customer's request and at the Customer's cost and expense, such assistance as it may reasonably require.
- 5.18 The Customer agrees to undertake at least termly due diligence of their Authorised Users and shall remove access to the Curriculum Materials from any staff member who is no longer employed by the Customer or who no longer requires access to the Curriculum Materials for any reason.

Restrictions

- 5.19 The Customer may not:
- (a) sell or resell the Curriculum Materials or otherwise exploit them for commercial purposes at any time;
 - (b) use all or any part of the Curriculum Materials for any purpose other than the purpose contained in Clause 5.7 including to cut, disaggregate (including taking any images out of context), alter, modify or add to any of the Curriculum Materials or alter the words or the order of the audio-visual material;
 - (c) display or distribute any part of the Curriculum Materials on any publicly accessible electronic network, including the internet;
 - (d) provide access to and/or allow use of the Curriculum Materials by anyone other than the Customer. For the purpose of this sub-clause and for the avoidance of doubt, reference to the Customer includes teachers employed by or under contract with the Customer and pupils enrolled at the school(s) for which the subscription was purchased by the Customer as set out in the Contract Letter.
- 5.20 Clause 5.19 will continue to apply after termination of this Agreement for any reason and any breach of Clause 5.19 will be a Material Breach for the purposes of Clause 10.

6. IMPLEMENTATION SERVICES

- 6.1 The Customer may request support from USPE to integrate the Curriculum Materials into the Customer's own curriculum.
- 6.2 Such Implementation Services shall be subject to the Implementation Fee in accordance with Clause 3.4 and details of the Implementation Services available can be provided upon request.

7. CONFIDENTIALITY

- 7.1 Each Party shall treat the Confidential Information of the other Party as strictly confidential and shall not disclose it to any third party for any purpose whatsoever and not make use of the Confidential Information or any part thereof other than for the Project and to treat it with at least the same care and in the same manner as its own secret and valuable information, being at least a reasonable degree of care.
- 7.2 Confidential Information may be disclosed by the receiving Party to its employees, Affiliates and professional advisers engaged for the purpose of the Project, on a need-to-know basis, provided that the recipient covenants to keep such information confidential to the extent that the receiving Party is bound by this Agreement and that such covenants are strictly observed.
- 7.3 The provisions of Clause 7.1 above shall not apply to any:
- (a) information which is or was already known to the receiving Party at time of disclosure to it, or
 - (b) information which after disclosure to the receiving Party under this Agreement is published or otherwise generally available to the public otherwise than through any act, default or omission by the receiving Party of its obligations hereunder, or
 - (c) information which can be established by tangible evidence was independently developed by the receiving Party without the use of or reference to the disclosing Party's Confidential Information; or
 - (d) information which is required to be disclosed to governmental or regulatory bodies or to a court of competent jurisdiction pursuant to any written law, provided, however, that such disclosure is limited to that required to be disclosed; or

- (e) information which is disclosed to the receiving Party by a third party without restriction and without breach of the confidentiality obligations under this Agreement by the receiving Party.

7.4 Except for the disclosure of the existence of this Agreement, including the title and identification of the Parties, which information shall not be deemed confidential, no Party shall disclose the specific terms and conditions of this Agreement without the express permission of the other Party.

7.5 The obligations of confidentiality in this Clause 7 shall not be affected by the expiry or termination of this Agreement.

8. **COLLABORATION**

8.1 Nothing in this Agreement shall prevent the Parties from exercising the following rights:

- (a) to continue existing commitments or to make new ones; and
- (b) to use, exploit (including sub-licensing) or otherwise take advantage of its Background IP.

9. **WARRANTIES AND LIABILITIES**

9.1 Each Party represents and warrants that it has the right to enter into this Agreement and provide the materials and services described herein. Except for the foregoing, USPE and the Customer do not make any representations, conditions or warranties, either express or implied with respect to any information, the Curriculum Materials, its Background IP or the Implementation Services performed pursuant to the terms of this Agreement.

9.2 Without limiting the generality of the foregoing, USPE and the Customer expressly disclaim any implied warranty, condition or representation that the said information, Curriculum Materials and its Background IP:

- (a) shall correspond with a particular description;
- (b) shall lead to any particular positive benefit to the Customer including with respect to any OFSTED report;
- (c) is of a merchantable satisfactory quality;
- (d) is fit for a particular purpose; or
- (e) is durable for a reasonable period of time.

9.3 Nothing in this Agreement shall be construed as:

- (a) a warranty by USPE or the Customer that anything made, used, sold or otherwise disposed of in connection with its Background IP disclosed or introduced hereunder is or will be free from infringement of patents, copyrights, trademarks, industrial designs or other intellectual property rights of any third party; or
- (b) a warranty by USPE that any third-party service mentioned in this Agreement is recommended for or otherwise suited to the needs of the Customer. The Customer will be required to evaluate the suitability or otherwise of such third-party services and enter into separate agreements directly with such third parties as required;
- (c) an obligation on USPE or the Customer to bring or prosecute or defend actions or suits against or by third parties for infringement of patents, copyrights, trademarks, industrial designs or other intellectual property or contractual rights, whether in connection with its Background IP or otherwise.

9.4 Save for death or personal injuries caused by negligence, in no event shall any Party, whether as a breach of contract, tort or otherwise, have any liability to any other Party or to a third party

for any indirect, special, incidental, consequential damages, loss of profits or pure economic loss.

9.5 Notwithstanding anything to the contrary, the total and cumulative liability of USPE under this Agreement, however arising, shall not exceed the Fee during the Initial Term or the applicable Subscription Fee for the relevant Renewal Term, as appropriate.

10. TERMINATION

10.1 A Party may terminate this Agreement at any time:

- (a) For a Material Breach by serving a written notice on the other identifying the nature of the breach. The termination will become effective thirty (30) days after receipt of the written notice unless during the relevant period of thirty (30) days the defaulting party promptly remedies the breach (if capable of remedy) and confirms this by written notice to the other party who shall, acting reasonably and without unnecessary delay, confirm the breach has been satisfactorily remedied.
- (b) If a Party (being a company) shall go into liquidation whether compulsory or voluntary (except for the purposes of a bona fide reconstruction or amalgamation with the consent of the other Party, such consent not to be unreasonably withheld) or if a Party shall have an administrator appointed or if a receiver, administrative receiver or manager shall be appointed over any part of the assets or undertaking of a Party.
- (c) There is a Change of Control of the Party. If the Customer anticipates a Change of Control, it shall notify USPE in writing of the details of the Change of Control and (where the Change of Control takes effect) the date of the Change of Control.
- (d) There is a proposed FA Novation to which USPE does not agree.

10.2 Upon termination of this Agreement by USPE due to a Material Breach by the Customer under Clause 10.1(a):

- (a) USPE shall have the right immediately to suspend access to the Curriculum Materials by the Customer and the Customer shall immediately pay any Subscription Fees owing to USPE, but in the event that Subscription Fees have been paid in advance, the Customer shall not be entitled to any refund of such Subscription Fees.
- (b) The Customer shall not use any of the copies made of the Curriculum Materials after the date of termination and the Customer shall be responsible for destroying all such copies of the Curriculum Materials and, if so requested by USPE, shall send a certificate confirming the destruction to USPE.

10.3 Upon termination of this Agreement by the Customer due to a Material Breach by USPE under Clause 10.1(a) the Customer shall:

- (a) Have the right to a pro-rata refund of 50% of the Subscription Fee for any period of the Renewal Term remaining (e.g. if the termination occurs at 6 months into the 12-month Renewal Term, there will be 50% of the term remaining and the Customer will be reimbursed 25% of the Subscription Fee).
- (b) Immediately cease to use or access the Curriculum Materials and permanently delete the Curriculum Materials and any copies etc permitted under this Agreement from all computer systems.

11. CONSEQUENCES OF TERMINATION

11.1 The provisions of Clauses 5.19 (Intellectual Property Rights), 7 (Confidentiality), 8 (Collaboration), 9 (Warranties and liabilities), 11 (Consequences of termination), 12 (Assignment and other dealings), 14 (Dispute resolution), 19 (Governing law) and 20 (Jurisdiction) shall continue in full force and in accordance with their terms, notwithstanding the expiration or termination of this Agreement for any reason.

11.2 Without prejudice to any claims for damages that any Party may be entitled to, upon termination or expiration of this Agreement,

- (a) each Party shall promptly return all materials of the other Parties in its possession, including, without limitation, Confidential Information of the other Party, upon the request of the other Party and permanently delete such materials from all computer systems; and
- (b) in the event of termination of this Agreement by the Customer, where fees are due to USPE, the Customer shall pay such fees without the right to offset or otherwise withhold payment.

12. ASSIGNMENT AND OTHER DEALINGS

12.1 Save as expressly provided in this Agreement, the Customer shall not assign, transfer, sublicense or sub-contract this Agreement or otherwise deal in any other manner with its rights or obligations, or any part thereof, under this Agreement without the prior written consent of USPE.

13. FORCE MAJEURE

13.1 No Party shall be liable for delays in delivery or performance when caused by any of the following which are beyond the actual control of the delayed Party: (i) acts of God, (ii) acts of the public enemy, (iii) acts or failure to act by the other Party, (iv) acts of civil or military authority, (v) governmental priorities, (vi) hurricanes, (vii) earthquakes, (viii) fires, (ix) floods, (x) epidemics or pandemics, (xi) embargoes, (xii) war, and (xiii) riots (hereinafter referred to as the "**Force Majeure Event**").

13.2 The respective obligations of any Party hereunder shall be suspended during the time and to the extent that such Party is prevented from complying therewith by a Force Majeure Event provided that such Party shall have given written notice thereof, specifying the nature and details of such event and the probable extent of the delay to the other Parties.

13.3 In case of a Force Majeure Event, the time for performance required by any Party under this Agreement shall be extended for any period during which the performance is prevented by the event. However, the other Party may terminate this Agreement by notice if such an event prevents performance continuously for more than sixty (60) days.

14. DISPUTE RESOLUTION

14.1 In the event of any dispute arising out of or in connection with this Agreement (including without limitation any question regarding the existence, scope, breach of, validity or termination of this Agreement) (a "**Dispute**") either Party may serve notice (a "**Dispute Notice**") on the other Party and the Dispute shall then be referred to each Party's appointed representative (being a senior member of staff or a senior executive) and each Party shall procure that a suitable representative is fully apprised of the circumstances relating to the Dispute and that they shall meet and attempt in good faith to resolve the Dispute within 30 Working Days of the service of the Dispute Notice.

14.2 A Party may (if appropriate having regard to the technical nature of a Dispute) propose to the other Party in writing that the Dispute be referred for determination by an independent expert (the "**Expert**"). If the other Party agrees that the Dispute in question should be decided by an Expert, being an independent person agreed between Parties, the Dispute will be referred to the Expert who shall act as an expert and not as an arbitrator and make such determination within 60 Working Days of the appointment and the Expert's determination shall, save in the case of fraud or manifest error, be final and binding on the Parties. The fees of the Expert shall be paid as the Expert may direct or in the absence of any direction such fees shall be paid in equal proportions by the Parties.

15. **NOTICE**

15.1 Any notice given under or in relation to this Agreement shall be in writing and signed by or on behalf of the Party giving it and shall be served by delivering it personally or by courier or by sending it by recorded delivery or registered post to the address and for the attention of the relevant party set out in Clause 15.3 or to such other address as that party may have stipulated in accordance with this Clause 15.

15.2 Any such notice shall be deemed to have been received:

- (a) if delivered personally or by courier, at the time of delivery;
- (b) in the case of recorded delivery or registered post from and to an address in the United Kingdom, 2 days from the date of posting and 5 days from the date of posting if from and to an address elsewhere;
- (c) in the case of registered airmail, 5 days from the date of posting.

15.3 The addresses and fax numbers of the parties for the purposes of this clause are:

- (a) **USPE:** Unity SP Offices, Park Road, Haverhill, Suffolk, CB9 7YD. Email: uspe@unitysp.co.uk
- (b) **The Customer:** as set out in the Contract Letter.

15.4 In proving service, it shall be sufficient to prove that the envelope containing the notice was addressed to the address of the relevant party set out in Clause 15.3 (or as otherwise notified by that party) and delivered either to that address or into the custody of the postal authorities as pre-paid first class post, recorded delivery, registered post or airmail letter, or that the notice was transmitted by fax to the fax number of the relevant party set out in Clause 15.3 (or as otherwise notified by that Party).

15.5 For the avoidance of doubt, notice given under this Agreement shall not be validly served if sent by e-mail.

16. **ENTIRE AGREEMENT**

This Agreement incorporating the Contract Letter constitutes the entire understanding between the Parties relating to the subject matter of this Agreement and, save where expressly referred to, shall supersede all previous agreements written or oral, representations, writing, negotiations or understandings between the parties or any of them in relation to the Project and each Party acknowledges to the other that it does not rely on any representation in entering into this Agreement other than a representation expressly set out in this Agreement. The Parties agree that they will have no remedy in respect of any untrue statement made to the other party upon which that party relied in entering this Agreement (other than a fraudulent misrepresentation) and that that party's only remedies can be for breach of contract.

17. **RIGHTS OF THIRD PARTIES**

No term of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any third party, but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.

18. **GENERAL**

18.1 No exercise or failure to exercise or delay in exercising any right power or remedy vested in any Party under or pursuant to this Agreement shall constitute a waiver by that Party of that or any other right power or remedy.

- 18.2 The Parties shall co-operate with each other and execute and deliver such instruments and documents and take such other action as may be reasonably requested from time to time in order to carry out and confirm the rights and the intended purpose of this Agreement.
- 18.3 In the event that any term, condition or provision of this Agreement is held to be a violation of any applicable law, statute or regulation the same shall be deemed to be deleted from this Agreement and shall be of no force and effect and this Agreement shall remain in full force and effect as if such term condition or provision had not originally been contained in this Agreement. Notwithstanding the above in the event of any such deletion the Parties shall negotiate in good faith in order to agree the terms of a mutually acceptable and satisfactory alternative provision in place of the provision so deleted.
- 18.4 This Agreement may be executed in any number of counterparts or duplicates each of which shall be an original but such counterparts or duplicates shall together constitute but one and the same agreement.
- 18.5 Nothing contained in this Agreement shall be deemed to create a partnership, joint venture or agency between the Parties or be deemed to authorise any Party (except as expressly provided for in this Agreement) to incur liabilities or obligations binding upon any other Party.

19. **GOVERNING LAW**

This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

20. **JURISDICTION**

Each party irrevocably agrees that, subject to Clause 14, the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

This Agreement has been entered into on the date stated at the beginning of it.

SCHEDULE
USP TRADE MARKS

1. "UNITY SCHOOLS PARTNERSHIP"

