

## TERMS AND CONDITIONS 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, Unit B, Homefield Road, Haverhill, Suffolk, England, CB9 8QP ("USPE") and the organisation purchasing the CUSP Materials identified in the Quotation (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, Norfolk 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 a range of curricula as well as educational, training and consultancy resource materials and assessments (defined below as the "**CUSP Materials**"). USP intends to develop further materials to cover additional elements of the National Curriculum and CPD requirements.
- (C) USPE is a wholly-owned subsidiary trading company of USP and USP has licensed USPE to re-sell the CUSP Materials.
- (D) The Customer wishes to access and use the CUSP Materials set out in the Quotation 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 CUSP Materials which might be purchased by the Customer from time to time as set out in a corresponding Quotation.

"**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 and conditions of service and the Quotation.

**"Authorised Users"** means an individual who is authorised by the Customer to have access to the CUSP 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 USPE receives the signed Quotation from the Customer.

**"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.

**"CUSP Materials"** includes the range of curricula, educational, training and consultancy resource materials and assessments referred to in paragraph B of the Background and as set out more specifically in the Quotation, including any other CUSP 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 Quotation.

**"Customer's Licence"** means the licence granted to the Customer and described in Clause 5.6.

**"Fee"** means the fee payable for access to the CUSP Materials during the first year of the Initial Term in accordance with the Quotation and Clause 3.

**"Implementation Fee"** means the fee which is applicable to the optional Implementation Services in accordance with the Quotation and Clause 3.1.

**"Implementation Services"** means the optional services provided by USPE referred to in Clause 6, details of which are set out in the Quotation.

**"Initial Term"** in relation to a subscription for CUSP Materials other than an Additional Subscription means the period of three years from the Commencement Date. In relation to an Additional Subscription, **"Initial Term"** shall mean the period set out in the relevant Quotation.

**"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 the relevant academy trust to the Successor Trust.

**“Quotation”** means the quotation which is issued with and accompanies these terms and conditions of service containing USPE’s quotation for the licensing of the CUSP Materials, together with any further quotations issued by USPE relating to additional subscriptions for CUSP Materials which might be paid for by the Customer from time to time.

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

**“Subscription Fee”** shall mean the annual fee payable by the Customer to USPE for each of the second and third years of the Initial Term and for each Renewal Term, as notified to the Customer from time to time charged at USPE’s prevailing rate and as further described in Clause 3.

**“Successor Trust”** shall mean any academy trust which may enter into a 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 Quotation.

**“USP Trade Marks”** means the trade marks 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 endure 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 twelve (12) month anniversary thereafter (the "**Anniversary Date**") unless USPE receives 60 days' notice in writing from the Customer prior to an Anniversary Date that it wishes to terminate the Agreement.

## 3. FEES

- 3.1 In addition to the CUSP Materials, the Customer may choose to pay for the Implementation Services to support its use and integration of the CUSP Materials. The Implementation Fee will be set out in the Quotation.
- 3.2 Within 7 days following the Customer's acceptance of the Quotation and provision of a purchase order number for the Fee and any Implementation Fee, USPE shall send the Customer an invoice for the Fee and any Implementation Fee.
- 3.3 No less than 30 days prior to the end of each of the first and second years of the Initial Term, USPE shall send an invoice to the Customer for the Subscription Fee due for the subsequent year. The Customer acknowledges that USPE will review the Subscription Fee annually and that the Subscription Fee payable by the Customer in each year will be charged at USPE's prevailing rate, as notified to the Customer in accordance with this Clause 3.
- 3.4 Thereafter, no earlier than one month in advance of the beginning of each Renewal Term, USPE shall notify the Customer of the Subscription Fee due for the next Renewal Term charged at USPE's prevailing rate. If the Customer has not notified USPE that it does not wish to renew this Agreement in accordance with Clause 2, USPE shall thereafter invoice the Customer for the Subscription Fee. The Customer shall pay the Subscription Fee for use of the CUSP Materials during such Renewal Term.

- 3.5 The Fee, Subscription Fee and any Implementation Fee is payable in accordance with the Quotation and this Clause 3.
- 3.6 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.
- 3.7 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.
- 3.8 In the event that the Customer does not pay any fees due under this Agreement by the due date for such payment:
- (a) 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. The Customer shall pay such interest together with any overdue amount,
  - (b) USPE reserves the right to suspend access to the CUSP Materials, and
  - (c) USPE may terminate this Agreement in accordance with Clause 10.1(a).

#### 4. CURRICULUM MATERIALS

- 4.1 Within three working days of the Customer's acceptance of the Quotation and provision of a purchase order number for the Fee, USPE shall procure that the CUSP 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 CUSP 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 - [cusp@unitysp.co.uk](mailto:cusp@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 CUSP Materials ("**Improvements**").
- 4.5 In consideration for payment of the Subscription Fee, USPE may make Improvements relating to CUSP 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 CUSP Materials for the purpose of this Agreement.
- 4.6 The CUSP website will host the CUSP 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 6, 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 CUSP 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 CUSP 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 CUSP 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 CUSP 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 CUSP 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 CUSP 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 CUSP 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 CUSP 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 CUSP 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 trade marks 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 CUSP 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 CUSP 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 (as they shall decide in their absolute discretion) 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:
- (a) remove access to the CUSP Materials from any staff member who is no longer employed by the Customer or who no longer requires access to the relevant CUSP Materials for any reason, and
  - (b) ensure that all authorised users have an e-mail address which relates to the school(s) for which the relevant subscription was purchased.

## **Restrictions**

- 5.19 The Customer shall not:
- (a) sell or resell the CUSP Materials or otherwise exploit them for commercial purposes at any time;
  - (b) use all or any part of the CUSP 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 CUSP Materials or alter the words or the order of the audio-visual material;
  - (c) except as provided in this Clause 5.19(c), display or distribute any part of the CUSP Materials on any publicly accessible electronic network, including the internet. The Customer may publish excerpts provided by USPE from the CUSP Materials on a website operated and controlled by the Customer, subject to the Customer complying with the guidance provided by USPE from time to time as published on the USP website;
  - (d) use, and USPE does not consent to the use of, the CUSP Materials or any part of them, or any data published by USPE and/or USP or contained in, or accessible via, the USP website or received by the Customer as part of any Implementation Services for the purposes of developing, training, fine-tuning or validating any artificial intelligence("AI") system or model;
  - (e) subject any part of the CUSP Materials to any automated analytical technique aimed at analysing text and data in digital form to generate information (including for the purposes of marking examinations and assessments) or to develop, train, fine-tune or validate AI systems or models which includes but is not limited to patterns, trends and correlations;
  - (f) provide access to and/or allow use of the CUSP 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 Quotation.
- 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 CUSP Materials into the Customer's own curriculum.
- 6.2 Such Implementation Services shall be subject to the Implementation Fee in accordance with Clause 3.1 and details of the Implementation Services available can be provided upon request. Once any Implementation Services have been agreed between the Customer and USPE, details of those services and the corresponding Implementation Fee will be set out in the Quotation.

## **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 CUSP 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, CUSP 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 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 CUSP 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 CUSP Materials after the date of termination and the Customer shall destroy and/or permanently delete from all computer systems all such copies of the CUSP Materials in its possession, custody or control and, if so requested by USPE, shall send a certificate confirming their destruction and/or deletion 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 CUSP Materials and permanently delete the CUSP 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 Party 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, sub-licence 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, Unit B, Homefield Road, Haverhill, Suffolk, CB9 8QP. Email: uspe@unitysp.co.uk
- (b) **The Customer:** as set out in the Quotation.

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 Quotation 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.

18.6 USPE may update and amend these terms and conditions of service from time to time by publishing revised terms and conditions of service for the use of CUSP Materials on the CUSP website and such revised terms and conditions of service shall supersede any terms and conditions of service which form part of this Agreement prior to that date.

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.



SCHEDULE  
USP TRADE MARKS

1. "UNITY SCHOOLS PARTNERSHIP"

