

## **IMPORTANT NOTICE:**

### **PLEASE READ CAREFULLY BEFORE USING THE SOFTWARE THAT THIS RELATES TO:**

**This End User Licence Agreement (“Licence”) is a legal agreement between you (“you”) and Learning Possibilities Limited (a company registered in England under number 06256264 and having its registered office at 506 Centennial Park, Centennial Avenue, Elstree, Hertfordshire WD6 3FG) (“LP”) for the LP+365 software product (and all subsequent patches, updates, upgrades and releases that LP provides to you)(“Software”) and the operating manuals and other literature relating to the Software for use by users of the Software published by LP (“Documentation”). The “Software” and “Documentation” are the “Licensed Materials”.**

**BY USING THE SOFTWARE, YOU AGREE TO BE BOUND BY THE TERMS OF THIS LICENCE. IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENCE, WE ARE UNWILLING TO LICENSE THE LICENSED MATERIALS TO YOU AND YOU MUST DELETE THE SOFTWARE FROM THE MEDIUM ON WHICH THE SOFTWARE IS STORED AND RETURN ALL DOCUMENTATION TO LP OR THE PERSON FROM WHOM YOU OBTAINED THE SOFTWARE WITHIN 30 DAYS. IF YOU DO THIS, YOU MAY OBTAIN, FROM WHOEVER YOU PAID, A REFUND OF ANY LICENCE FEE YOU PAID.**

## **AGREED TERMS**

### **1 ACKNOWLEDGEMENTS**

#### **1.1 You acknowledge and accept that:**

- 1.1.1** in some circumstances LP may work with a partner who is an authorised intermediary of LP in relation to the marketing, licensing, integration, support or other services relating to the use of the Licensed Materials (“**Partner**”) and LP is not responsible for the acts or omissions of any Partner;
- 1.1.2** in order to use the Software, you must have downloaded and installed Microsoft Office 365 onto the same equipment on which the Software is to be used and that use of the Licenced Materials is conditional on you having read, understood and accepted the end user licence agreement relating to use of that installation of Microsoft Office 365;
- 1.1.3** the Software works with functionality provided by Microsoft Azure in the cloud and use of the Licensed Materials is conditional on you having read, understood and accepted the end user licence agreement relating to use of Microsoft Azure;
- 1.1.4** LP may change these terms at any time by sending you a written warning informing you of a change when you next use the Software. The new terms may be displayed on-screen and/or be provided to you via a hyperlink and you may be required to read and accept them in order to continue your use of the Software; and
- 1.1.5** internet transmissions are never completely private or secure and that any information you send using the Software may be read or intercepted by others, even if there is a special notice that a particular transmission is encrypted.

#### **1.2 You agree that:**

- 1.2.1** you shall comply with any obligation to be performed or observed by a user in accordance with this Licence; and

- 1.2.2 where you act as a customer of LP or its Partner, you shall procure that your users do likewise on the basis that you accept full responsibility for all acts and omissions by your users in respect of any breach of the terms of this Licence.
- 1.3 A Partner is not a "partner" in a legal sense, and only acts as an agent or reseller for LP.
- 1.4 Any words following the terms **including, include, in particular** or **for example** or any similar phrase or expression shall mean without limitation.

## 2 GRANT AND SCOPE OF LICENCE

- 2.1 In consideration of you agreeing to comply with the terms of this Licence, LP hereby give to you a licence to use the Licensed Materials on the terms of this Licence.
- 2.2 You may use the Licensed Materials for your internal business purposes only.
- 2.3 The Licence is a non-exclusive, non-transferable and non-sublicensable right and licence to use the Licensed Materials on the terms and conditions of this Licence in conjunction with the equipment and at the location and by the number and type of users and subject to such other conditions (such as page views), all only to the extent permitted or stipulated by LP or a Partner in writing.
- 2.4 The Licence is personal to you. You shall not permit any third party to use or have access to the Licensed Materials, except as expressly permitted by LP or its Partner in writing.
- 2.5 If the permitted equipment becomes inoperable, you may use the Licensed Materials on other back-up equipment on the condition that use of the Software on the permitted equipment is resumed in place of the substitute equipment as soon as reasonably practicable.
- 2.6 Other than as is permitted for the equipment and users for whom you have bought the Licence, you shall not copy the Licensed Materials without the prior written consent of LP, provided that you may make copies as back-up for your operational use of the Software to the extent that you reasonably need. All copies shall remain the property of LP, and you must ensure that they bear the copyright and trade mark notices of LP or its licensors. You must keep a record of your copying of the Licensed Materials and shall produce that record to LP on request.
- 2.7 You shall ensure that the copyright and trade mark notices of LP or its licensors prominently appear on all Licensed Materials. You shall not change, remove or obscure any labels, plates, insignia, lettering or other markings which are on the Licensed Materials.
- 2.8 "Use" of the Software in this Licence means use only that is in machine-executable object code form and not in human-understandable source code form, except to the extent:
- 2.8.1 that the Software delivered to you is intentionally delivered in a human-understandable source code form; or
- 2.8.2 otherwise permitted by or on behalf of LP in writing.
- 2.9 Except to the extent permitted by law or as otherwise expressly set out in this Licence, you shall have no right to copy, rent, lease, loan, modify, adapt, merge, reverse engineer, decompile, disassemble, translate or create derivative works of the Software or use the source code to the Software in whole or in part. The interface information necessary to achieve interoperability of the Software with independently created computer programs will be provided by LP or its Partner on request on payment of LP's or its Partner's reasonable costs and expenses for procuring or supplying that information. In the event that you are not provided with such information within a reasonable time following your reasonable

request, you may take such steps as to achieve interoperability provided that you shall only reverse engineer or decompile to the extent permitted by law and provided that the information obtained by you during such activities:

- 2.9.1 is used only for the purpose of achieving interoperability of the Software with another software program;
  - 2.9.2 is not unnecessarily disclosed or communicated to any third party without LP's prior written consent; and
  - 2.9.3 is not used to create any software which is substantially similar to the Software.
- 2.10 The integrity of the Software may be protected by technical protection measures so that the intellectual property rights, including copyright, in the Software is not misappropriated. You must not attempt in any way to remove or circumvent such measures, nor to apply, manufacture, import, distribute, sell, let for hire, offer, expose or advertise for sale or for hire or have in your possession for private or commercial purposes, any means whose sole reasonable purpose is to facilitate the unauthorised removal or circumvention of such measures.
- 2.11 You must not alter or modify the Licensed Materials or permit them to be combined with any other software, except to the extent permitted in writing by LP.
- 2.12 You may use the Licensed Materials only for processing your own data in the normal course of your business, unless otherwise expressly agreed by LP in writing.
- 2.13 You shall keep the Licensed Materials (and all copies) secure.
- 2.14 You shall not allow any third party to access the Licensed Materials, and shall not use the Licensed Materials on an outsourcing or service bureau or application service provider basis without the prior consent in writing of LP.
- 2.15 You shall maintain records of the number and location of all copies of the Licensed Materials and you shall take all reasonable precautions to protect the Licensed Materials from unauthorised copying or use.
- 2.16 The Software may incorporate third party software. You agree to comply with any software licence terms of such third party software licensor as are identified by LP and to provide such assistance, co-operation and information to LP in relation to that third party software.
- 2.17 You shall permit a nominated Partner of LP, LP and its licensors, agents, representatives, sub-contractors and employees at all reasonable times and on reasonable notice to enter such places and inspect such equipment under your or your agents', employees', contractors' or customers' control to verify that you are complying with the terms of this Licence and that you and your agents, employees, contractors and customers are not infringing this Licence.
- 2.18 If you are, or any user for which you have taken responsibility for is, in breach of this Licence, LP may disable access to any Licensed Materials at any time and without notice whether by use of code in the Licensed Materials, by remote access or by physical attendance at the places referred to in Paragraph 2.17 or where the equipment is located.

### **3 INTELLECTUAL PROPERTY**

- 3.1 You acknowledge that LP and its licensors own all Intellectual Property Rights (as defined below) in the Licensed Materials, whether or not any of the Licensed Materials are created, designed or adapted on special request. You accept that rights in the Licensed Materials are

licensed (not sold) to you, and that you have no rights in, or to, the Licensed Materials other than the right to use them in accordance with the express terms of this Licence.

**"Intellectual Property Rights"** means copyright and related rights, trade marks and service marks, trade names and domain names, rights under licences, rights in get-up, rights to goodwill or to sue for passing off or unfair competition, patents, rights to inventions, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, 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.

#### 4 **WARRANTY**

- 4.1 Subject to the rest of this Paragraph 4, LP warrants that for a period of 90 days starting on the date on which you initially receive the Software, the Software when properly used in accordance with this Licence will materially conform to the relevant part of the Documentation current at that time.
- 4.2 You acknowledge that the Software has not been developed to meet your individual requirements and that it is therefore your responsibility to ensure that the facilities and functions of the Software as described in the Documentation meet your requirements.
- 4.3 The warranty does not cover defects caused by repair, adjustment, alteration, change or modification to the Software, or attempt at doing so, other than by LP, or by the combination or incompatibility of the Software with any equipment, hardware, operating system or third party software not expressly approved by LP.
- 4.4 You acknowledge that the Software may not be free of errors or bugs and you agree that the existence of any minor errors shall not constitute a breach of this Licence.
- 4.5 If, within the warranty period described in Paragraph 4.1, you notify LP or, depending on your relationship with the nominated Partner of LP, its Partner in writing of any defect or fault in the Software for which LP is responsible, and you have complied with the terms of this Licence, you shall have either of the following remedies, at the sole option of LP:
  - 4.5.1 for LP, or its Partner, to use its reasonable endeavours to repair or replace the Software, provided that you make available all information and co-operation that may be necessary to assist LP or its Partner in resolving the defect or fault, including sufficient information to enable LP or its Partner to recreate the defect or fault; or
  - 4.5.2 subject to you returning to LP or destroying (as LP directs) all copies of the relevant part of the Licensed Materials, for you to obtain a refund from LP or its Partner for the fee you paid to LP or its Partner in respect of the Software (in which event this Licence shall automatically terminate).
- 4.6 Except for the express warranties provided under this Licence and to the extent possible by law, the Licensed Materials and any media on which the Licensed Materials are delivered are provided "as is" and all conditions, warranties, terms and obligations other than in this Licence whether express or implied by statute, common law or otherwise are excluded.
- 4.7 In the event that you request LP to provide a warranty remedy which LP subsequently finds it is not obliged to do under this Licence, LP may charge you at the then current rates chargeable by LP for time spent in dealing with the issue.

## 5 LIMITATION OF LIABILITY

5.1 This Paragraph 5 prevails over all other Paragraphs in this Licence and sets forth the entire Liability of LP, and, subject to Paragraph 4.5, your sole and exclusive remedies against LP, in respect of:

5.1.1 performance, non-performance, purported performance, delay in performance or mis-performance of this Licence or of any goods, services, deliverables or software in connection with this Licence; or

5.1.2 otherwise in relation to this Licence or entering into this Licence.

5.2 LP does not exclude or limit its Liability for:

5.2.1 its fraud;

5.2.2 death or personal injury caused by its Negligence;

5.2.3 any breach of the non-excludable obligations implied by law as to having title to supply goods; or

5.2.4 any other Liability which cannot be excluded or limited by applicable law.

5.3 Subject to Paragraph 5.2, LP does not accept and it hereby excludes any Liability for Negligence other than any Liability arising pursuant to the terms of this Licence.

5.4 Subject to Paragraph 5.2, LP shall have no Liability in respect of any:

5.4.1 indirect or consequential losses, damages, costs or expenses;

5.4.2 loss of actual or anticipated profits;

5.4.3 loss of contracts;

5.4.4 loss of use of money;

5.4.5 loss of anticipated savings;

5.4.6 loss of revenue;

5.4.7 loss of goodwill;

5.4.8 loss of reputation;

5.4.9 ex gratia payments;

5.4.10 loss of business;

5.4.11 loss of operation time;

5.4.12 loss of opportunity; or

5.4.13 loss of, damage to or corruption of, data;

whether or not such losses were reasonably foreseeable or LP or its agents having been advised of the possibility of you incurring such losses. For the avoidance of doubt, Paragraphs 5.4.2 to 5.4.13 apply whether such losses are direct, indirect, consequential or otherwise.

- 5.5 Subject to Paragraph 5.2, the total aggregate Liability of LP for all causes of action arising in each calendar year shall be limited to the greater of: (a) £5 per year per individual user affected; or (b) 110% of the total sums paid and total other sums payable by you to LP or its Partner for the right to use the Software, in aggregate under this Licence, in that calendar year.
- 5.6 The limitation of Liability under Paragraph 5.5 has effect in relation both to any Liability expressly provided for under this Licence and to any Liability arising by reason of the invalidity or unenforceability of any term of this Licence.
- 5.7 In this Licence:
- 5.7.1 "Liability" means liability in or for breach of contract (including liability under any indemnity), tort (whether deliberate or not), Negligence, breach of statutory duty, misrepresentation, restitution or any other cause of action whatsoever relating to or arising under or in connection with this Licence, including liability expressly provided for under this Licence or arising by reason of the invalidity or unenforceability of any term of this Licence (and for the purposes of this definition, all references to "this Licence" shall be deemed to include any collateral contract); and
- 5.7.2 "Negligence" means the breach of any (i) obligation arising from the express or implied terms of a contract to take reasonable care or exercise reasonable skill in the performance of the contract or (ii) common law duty to take reasonable care or exercise reasonable skill (but not any stricter duty).

## 6 TERMINATION

- 6.1 Unless terminated earlier pursuant to this Paragraph 6 or under Paragraph 4.5.2, this Licence shall terminate upon the earlier of expiry or termination of your right to use the Licensed Materials (as permitted by LP or its Partner in writing) or in accordance with this Paragraph 6.
- 6.2 LP may terminate this Licence immediately if:
- 6.2.1 you are in material breach of any of your obligations under this Licence or any other agreement between you and LP or its Partner;
- 6.2.2 you are in persistent breach of any of your obligations under this Licence or any other agreement between you and LP or its Partner; or
- 6.2.3 you give notice to any of your creditors that you have suspended or are about to suspend payment, or an order is made or a resolution is passed for your winding-up or an administration order is made or an administrator is appointed to manage your affairs, business and property or a receiver and/or manager or administrative receiver is appointed in respect of all or any of your assets or undertaking or circumstances arise which entitle the court or a creditor to appoint a receiver and/or manager or administrative receiver or administrator or which entitle the court to make a winding-up or bankruptcy order or you take or suffer any similar or analogous action in consequence of debt in any jurisdiction.
- 6.3 Termination of this Licence shall be without prejudice to any accrued rights or remedies.
- 6.4 Termination of this Licence will not affect the coming into force or continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after such termination.
- 6.5 Upon termination of this Licence for any reason:

- 6.5.1 all rights granted to you under this Licence shall cease;
- 6.5.2 you must immediately cease all activities authorised by this Licence, including use of the Licensed Materials; and
- 6.5.3 LP may at its option require you promptly to delete or permanently erase all Licensed Materials from any computer disks, tapes or other material in your possession or under your control or promptly deliver up or destroy materials and tangible items in your possession or under your control which contain any such Licensed Materials. LP may require you to provide a written declaration, signed by an officer or other authorised individual stating that there has been full compliance with this Paragraph 6.5.3.

## **7 GENERAL**

- 7.1 This Licence (together with any other document referred to in it) shall operate to the entire exclusion of any other agreement, understanding or arrangement of any kind between the parties hereto preceding the date of this Licence and in any way relating to the subject matter of this Licence and to the exclusion of any representations not expressly stated herein save for any fraudulent misrepresentations or any misrepresentation as to a fundamental matter. Each party acknowledges that it has not entered into this Licence based on any representation that is not expressly incorporated into this Licence.
- 7.2 This Licence (together with any other document referred to in it) constitutes the whole agreement and understanding of the parties as to the subject matter hereof and there are no provisions, terms, conditions or obligations, whether oral or written, express or implied, other than those contained or referred to herein.
- 7.3 Unless a party expressly states in writing that it is waiving a particular power, right or remedy in a particular stated instance, no failure or delay by either party in exercising any power, right or remedy under this Licence or at law shall operate as a waiver of such power, right or remedy; and no waiver in any particular instance shall extend to or affect any other or subsequent event or impair any rights or remedies in respect of it or in any way modify or diminish that party's rights under this Licence or at law.
- 7.4 If any Paragraph or other provision in this Licence shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall in no way affect any other Paragraph or provision or part of any Paragraph or provision, all of which shall remain in full force and effect.
- 7.5 LP may transfer its rights and obligations under this Licence to another organisation, but this will not affect your rights or the obligations of LP under this Licence.
- 7.6 You shall not (and shall not purport to) assign, sub-license, sub-contract, transfer, novate, charge or otherwise encumber, create any trust over or deal in any manner with this Licence or any of your rights, liabilities or obligations under this Licence without the prior written consent of LP.
- 7.7 Nothing in this Licence shall create or be deemed to create a partnership, an agency or a relationship of employer and employee between the parties.
- 7.8 A person who is not a party to this Licence has no rights under any law to enforce any term of this Licence.
- 7.9 This Licence 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 English law. In respect of any disputes or claim arising out of

or in connection with this Licence or its subject matter or formation (including non-contractual disputes or claims), the parties irrevocably agree that the English courts shall have exclusive jurisdiction over any claim or matter brought by you in relation to this Licence. Nothing in this Paragraph 7.9 shall limit the right of LP to take proceedings against you in any other court of competent jurisdiction. All dealings, correspondence and contacts between the parties shall be made or conducted in the English language.

- 7.10 Other than as set out in Paragraph 1.1.4, no change to this Licence shall be binding unless it is expressly agreed in writing by LP and expressed to be for the purpose of such change.

**V001.April 2016.**