

## BUD SYSTEMS SERVICE TERMS AND CONDITIONS

of Bud Systems Limited, a company registered in England and Wales under number (10455960) whose registered office is at 40 Berkeley Square, Bristol, England, BS8 1HP (“Bud Systems”).

These Service Terms and Conditions (“Terms & Conditions”) are effective from 1<sup>st</sup> May 2024 and shall apply to all customers who have entered into a Service Agreement between the Customer (as stated on the Service Agreement) and Bud Systems.

### 1. INTERPRETATION

1.1. The definitions and rules of interpretation in this clause apply in this Agreement.

1.2. Definitions:

**Active Learner** means any Learner record within the Bud Platform, who is not marked as in the Bud Platform as ‘On Break’, ‘Withdrawn’ or ‘Completed’;

**Authorised Users** means those individuals that the Customer has authorised to use the Bud Platform for the benefit of the Customer, typically Employees of the Customer Applicants, Learners, and Employer Contacts;

**Bud Expert** means a Customer contact as specified in the Service Agreement who will undertake the responsibilities as detailed in Clause 3.5;

**Bud Platform** means the hosted software provided by Bud Systems accessible at <https://web.bud.co.uk>;

**Business Day** means any day which is not a Saturday, Sunday, a public holiday in the UK, or the 27<sup>th</sup> December to 31<sup>st</sup> December irrespective of the day of the week on which those dates fall;

**Confidential Information** means information that is proprietary or confidential and which is either clearly labelled as such, identified as Confidential Information in Clause 8, or would otherwise be reasonably understood to be confidential by the party receiving it;

**Customer Data** means the data input into the Bud Platform by the Customer, by Authorised Users, or by Bud Systems on the Customer’s behalf;

**Data Protection Law** means all applicable laws, orders or regulations relating to data protection, including the Data Protection 2018 and UK GDPR;

**Effective Date** means the Agreement Effective Date as stated on the Service Agreement;

**Executive Sponsor** means a Customer contact as specified in the Service Agreement who is a senior executive at the Customer with the authority to implement change, provide strategic oversight and act as an escalation point of contact;

**Fees** means any and all of the Service Fees, Minimum Monthly Fees, the Implementation Fee, the Migration Fee, the Additional Services fee, the Archive Access Fees and the Data Export Service Fee as detailed in the Service Agreement;

**Implementation Fee** means the initial fee for Implementation Package as specified in the Service Agreement;

**Implementation Package** means the services and actions undertaken by Bud Systems to create a Customer instance of the Bud Platform;

**Initial Term** means the period of time between the Effective Date and the Initial Term End Date;

**Initial Term End Date** means the date as stated on the Service Agreement;

**List Price** means the retail value of the Service Fees;

**Machine Readable** means a data file in a JavaScript Object Notation (“json”) file format or Comma Separated Values (“csv”) format (which, when formatted, can be read and understood by an individual familiar with the format); save that, where a file has been originally upload in another file format (including but not limited to “.pdf”, “.docx”, “.xlsx”, “.pptx”, “.mov”, “.jpg”), then that file will be made available in that original format;

**Minimum Monthly Fee** means the Minimum Monthly Fee as stated in the Service Agreement;

**Normal Business Hours** means 9:00am to 5:00pm local UK time, each Business Day;

**Primary Contact** means a Customer contact as specified in the Service Agreement responsible for the daily management of Bud, including but not limited to raising issues, ideas for changes, attending service calls, initial resolution of disputes, providing feedback and managing general queries;

**RPI** means the price increase that is applied to the Service Fees equal to the ‘RPI All Items’ % as reported by the Office for National Statistics for the corresponding month of November (found at <https://www.ons.gov.uk/inflationandpriceindices> ) plus up to 3% as determined by Bud Systems;

**Service Fees** means the monthly Service Fee as specified in the Service Agreement for Active Learners in the Bud Platform;

**Services** means the provision of the Bud Platform and associated obligations by Bud Systems as stated in Clause 2 and the Schedules of these Terms & Conditions;

**Suspended Learner** means a Learner who has formally submitted (and had accepted and recorded) a break in learning, and where such break has been processed; such a Learner remains a Suspended Learner until either formal permanent withdrawal from the programme or formal recommencement of learning. For the avoidance of doubt, the date at which a Learner is deemed suspended (and thus not an Active Learner) is the date that processing of the break is completed, not the break in learning date itself;

**Technical Specifications** means the technical data and specifications of the Bud Platform that can be found at [www.bud.co.uk](http://www.bud.co.uk);

**Virus** means any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, Viruses and other similar things or devices.

1.3. Clause, Schedule and paragraph headings shall not affect the interpretation of these Terms & Conditions.

1.4. A ‘person’ includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.5. A reference to a ‘company’ shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.6. Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.

1.7. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.8. A reference to 'writing' or 'written' includes e-mail.

1.9. References to clauses, paragraphs and Schedules are to the clauses, paragraphs and Schedules of these Terms & Conditions.

1.10. References to any statutes or statutory provisions include any statute or statutory provision which amends, extends, consolidates or replaces the same, or which has been amended, extended, consolidated or replaced by the same, and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute or statutory provision.

1.11. If there is an inconsistency between any of the provisions in the Service Agreement and these Terms & Conditions and Schedules the provisions in the Service Agreement shall prevail.

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. SERVICES

2.1. The Bud Platform provides the Customer with a software solution that allows the Customer's learners to enrol and participate through a custom designed programme of learning, delivered by the Customer and monitored by The Customer and The Customer's clients and, for any such government funded programme facilitates the evidence and funding management required, through the functionality as per the Subscription Tier.

2.2. Bud Systems hereby grants to the Customer on and subject to these Terms & Conditions a non-exclusive, non-transferable licence to allow Authorised Users to access Bud and to use Bud solely for its intended use.

2.3. The Bud Platform shall be provided to the Customer as a software-as-a service via a single production system found at <https://web.bud.co.uk/> instance unless expressly stated.

2.4. Bud Systems shall make the Bud Platform available to the Customer as detailed in the Availability clauses in Schedule 1.

2.5. Bud Systems will provide Customer Support through a ticketing system to allow the customer to raise support requests to the Bud Systems Support Team who will respond as per the Technical Support clauses in Schedule 3.

2.6. Bud Systems will provide the Customer with a named Service Manager to oversee the day-to-day management of the Services who shall be available during Normal Business Hours.

2.7. Any and all rights provided under this Clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer; unless otherwise stated in the Service Agreement

2.8. Bud Systems shall perform the Implementation Package as outlined in the Service Agreement

2.9. Both parties acknowledge that successful utilisation of the Bud platform requires an effective implementation process. Both parties agree to dedicate staff with the necessary skills and experience to ensure a smooth and successful implementation.

2.10. Within fourteen (14) days, or as otherwise agreed, of the date of the Service Agreement, Bud Systems and the Customer will jointly develop and formally agree upon an Onboarding Plan, based on the services and deliverables detailed within the Service Agreement.

2.11. The Customer acknowledges that after the completion of the Implementation Package any additional training or similar

support for new, existing, or replacement Bud Experts is a chargeable service.

2.12. Bud Systems is entitled to make changes to the Bud Platform of which the majority will provide enhancements and/or additional functionality beneficial to the Customer but may also include from time to time deleting features including ceasing access to third-party applications and services for contractual or regulatory reasons or if customer feedback indicates such a change is required. Bud Systems will provide The Customer with reasonable advance notice (not to be less than 30 days' notice, except where shorter notice is required by a regulator) of any material changes.

2.13. In the instance of change of the Bud Platform is a result of a suggestion or comment from The Customer, The Customer acknowledges Bud Systems has the right to use and incorporate the change into the Bud Platform without compensating The Customer for it.

2.14. This Agreement shall not prevent Bud Systems from entering into similar agreements with third parties, or from independently developing, using, selling or licensing materials, products or services which are similar to those provided under this Agreement.

## 3. CUSTOMER'S OBLIGATIONS

3.1. The Customer shall

3.1.1. provide Bud Systems with all necessary co-operation in relation to these Terms & conditions and provide all necessary access to such information as may be required by Bud Systems in order to render the Services, including but not limited to Customer Data, security access information and software interfaces to the Customer's other business applications;

3.1.2. comply with all applicable laws and regulations with respect to its activities and its use or receipt of the Bud Platform and Services under these Terms & Conditions;

3.1.3. ensure that all Authorised Users shall adhere to Acceptable Use Agreement that can be found at [www.bud.co.uk](http://www.bud.co.uk) and ensure that each Authorised User keeps a secure password for their use of the Bud Platform and that each Authorised User keeps their password confidential;

3.1.4. use all reasonable endeavours to prevent any unauthorised access to, or use of, the Bud Platform and notify Bud Systems promptly of any such unauthorised access or use; and

3.1.5. acknowledge that excessive or abnormal data storage via the upload of files and attachments into the Bud Platform may incur additional fees. In any such event of Bud Systems identifying excessive or abnormal data storage by The Customer, Bud Systems will provide notice to The Customer and allow 30 days to compress, delete or otherwise reduce storage of excessive files.

3.2. The Customer shall not store, distribute or transmit (i) any Virus, or (ii) any material through the Services that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities. The Customer shall be entitled (as part of its licensed use of the Bud Platform) to upload files containing scripts to the Bud Platform, acknowledging that Bud Systems cannot give any guarantee in relation to the performance of such scripts;

3.3. Customer shall ensure that such scripts do not themselves contain or behave like a Virus or otherwise act in a way which would or could introduce a Virus into the Bud Platform;

3.3.1. clause 9 shall apply in respect of any consequences of, or claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) incurred or received by Bud Systems arising out of or in connection with such uploads by the Customer;

3.4. The Customer shall provide a named contact within the Service Agreement and notify to Bud Systems of any change thereafter a Primary Contact; an Executive Sponsor; and two Bud Experts:

3.5. The Customer recognises the Bud Experts will be competent to:

3.5.1. act as a primary point of contact for all first-line support inquiries related to the Bud System from Authorised Users;

3.5.2. triage and escalate second-line support queries to the Bud System Support Team;

3.5.3. serve as subject matter expert of Bud and associated Customer business processes;

3.5.4. review any Bud information releases provided by the Supplier and communicating their impact across the Customer's business as necessary;

3.5.5. implement Bud configuration changes to leverage new Bud functionalities;

3.5.6. train existing and new Users on the proper use of the Bud System; and

3.5.7. undertake any other associated tasks to support the use of Bud within the Customer.

3.6. The Customer shall not:

3.6.1. attempt to copy, duplicate, modify, create derivative works from or distribute all or any portion of the Bud Platform except to the extent expressly set out in this Agreement or as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties;

3.6.2. attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Bud Platform, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties;

3.6.3. access all or any part of the Bud Platform in order to build a product or service which competes with the Bud Platform and/or the Services;

3.6.4. use the Bud Platform or Services to provide services to third parties;

3.6.5. subject to Clause 15.5 (assignment), transfer, temporarily or permanently, any of its rights under this Agreement; or

3.6.6. otherwise attempt to obtain, or assist third parties in obtaining, access to the Bud Platform;

#### **4. TECHNICAL AND SECURITY**

4.1. Bud Systems shall meet the requirements as specified by ISO/IEC 27001 (or equivalent international standard for information) and maintain ISO27001 Accreditation and Cyber Essentials Plus and any other specifications as detailed in the Technical Specifications.

4.2. Bud Systems retains the right to implement an archiving process for records that have remained unchanged for a period of one year or more as required to maintain responsiveness of the Bud Platform and facilitate the achievement of the Uptime Service Level. In any such case of archiving, records may be moved to a secondary storage area that remains accessible to users but may result in a lower latency / application response time.

4.3. Bud Systems withholds the right to enlist the services of any third party subcontractors that meets the same or higher security standards maintained by Bud Systems.

4.4. Bud Systems may make available certain features within the Bud Platform that utilise artificial intelligence and machine learning functionality as developed by Bud Systems or a third party.

4.5. The Customer acknowledges and accepts that any output derived from artificial intelligence and /or machine learning is dependent on the Customer Data that may be inaccurate or false and as such the Customer accepts the consequences of relying on and using any such data.

#### **5. CUSTOMER DATA AND DATA PROTECTION**

5.1. In this Clause 5, the terms 'personal data', 'process', 'data controller' and 'data subject' shall have the meanings given to them from time to time under Data Protection Law.

5.2. The Customer shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data where the Customer supplies that Customer Data to Bud Systems and is to be processed by Bud Systems as a data processor.

5.3. Bud Systems shall process, in compliance with Data Protection Law, personal data forming part of the Customer Data as a data processor in the context of the following:

5.3.1. in order to perform the Services and to administer use of the Bud Platform; and

5.3.2. in order to perform functions as instructed by the Customer in relation to the UK's Education and Skills Funding Agency's systems.

5.4. The Customer acknowledges that in processing personal data in accordance with Clause 5.3 Bud Systems shall:

5.4.1. only provide Customer Data to any third party for the purposes of processing by that third party having ensured that such third party is subject to contractual obligations as regards its processing of that Customer Data which are equivalent to those set out in Clause 5.5;

5.4.2. permit access to Customer Data by its personnel or authorised third parties only if the person accessing such Customer Data is under appropriate confidentiality obligations and Bud Systems has taken reasonable steps to otherwise ensure the reliability of the relevant person;

5.4.3. have in place now and shall on a continuing basis take appropriate technical and organisational measures to keep Customer Data confidential and secure and to protect Customer Data against accidental loss or unlawful destruction, alteration, disclosure or access;

5.4.4. provide all relevant data subjects with all information required under Data Protection Law in relation to such processing by Bud Systems and/or any third party and obtain any necessary consents so that Bud Systems may lawfully process the Customer Data in such capacity;

5.4.5. enable the exercise by each data subject of their rights under Data Protection Law in relation to the Customer Data;

5.4.6. on reasonable request, make available to the Customer copies of the information strictly required by the Customer to enable the Customer to assess Bud Systems' compliance with this Clause 5.4. Further, on reasonable notice and during Bud Systems' standard working hours (and only to the extent such audit is conducted without interruption to Bud Systems' business operations), the Customer or an auditor nominated by the Customer shall be entitled to audit Bud Systems' premises and

Customer-related computer systems once in each 12 month period under this Agreement for the purpose of assessing Bud Systems' compliance with this Clause 5.4; and

5.4.7. not transfer any Customer Data outside the European Economic Area unless Bud Systems has notified Customer of any such transfer in advance and has ensured that such transfer is in compliance with Data Protection Law.

5.5. To the extent that Bud Systems acts as a data processor as envisaged by Clause 5.4, it shall:

5.5.1. only provide Customer Data to any sub-contractor for the purposes of processing by that sub-contractor with the prior written consent of the Customer (such consent not to be unreasonably withheld, conditioned or delayed) and shall ensure that each sub-contractor is subject to contractual obligations as regards its processing of that Customer Data which are equivalent to those set out in this Clause 5.5. The Customer hereby provides such prior written consent in relation to any sub-contractor used by Bud Systems;

5.5.2. process any Customer Data only during the term of this Agreement (and any applicable post termination period), for the purposes described in Clause 5.3 and at all times in accordance with the written instructions of the Customer (including as set out in this Agreement), except to the extent that it is required to process any Customer Data in any other way under applicable law (and in which case Bud Systems shall, to the extent permitted under the relevant applicable law, provide the Customer with notice of that alternative processing). Bud Systems shall also inform the Customer if, in Bud Systems' opinion, any such instruction by the Customer infringes any Data Protection Law;

5.5.3. permit access to Customer Data by its personnel or authorised third parties only if the person accessing such Customer Data is under appropriate confidentiality obligations and Bud Systems has taken reasonable steps to otherwise ensure the reliability of the relevant person;

5.5.4. have in place now and shall on a continuing basis take appropriate technical and organisational measures to keep Customer Data confidential and secure and to protect Customer Data against accidental loss or unlawful destruction, alteration, disclosure or access;

5.5.5. taking into account the nature of the processing, assist the Customer by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Customer's obligation to respond to requests for exercising data subject rights in relation to the Customer Data;

5.5.6. taking into account the nature of the processing and the information available to Bud Systems, reasonably assist the Customer (on reasonable request) in ensuring compliance with any other obligations under Data Protection Law;

5.5.7. on termination or expiry of this Agreement (and except as otherwise required under applicable law or to the extent retained for the purposes described in Clause 5.4 or as otherwise agreed under clause 11.7), delete or facilitate return in a Machine Readable format to the Customer (as the Customer elects) all Customer Data;

5.5.8. on reasonable request, make available to the Customer copies of the information strictly required by the Customer to enable the Customer to assess Bud Systems' compliance with this Clause 5.5. Further, on reasonable notice and during Bud Systems' standard working hours (and only to the extent such audit is conducted without interruption to Bud Systems' business operations), the Customer or an auditor nominated by the Customer shall be entitled to audit Bud Systems' premises and Customer-related computer systems once in each 12 month

period under this Agreement for the purpose of assessing Bud Systems' compliance with this Clause 5.5.; and

5.5.9. only transfer any Customer Data outside the European Economic Area having in advance discussed and agreed with the Customer (such agreement not to be unreasonably withheld, conditioned or delayed) how such transfer is to be conducted in compliance with Data Protection Legislation.

5.6. Customer shall ensure that the Customer is entitled to transfer relevant personal data to Bud Systems (and shall provide all relevant data subjects with all information required under Data Protection Law in relation to such transfer and obtain all necessary consents) so that Bud Systems may lawfully process the personal data in accordance with this Agreement.

5.7. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for Bud Systems to use all reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Bud Systems in accordance with the Technical Specification. Bud Systems shall not be responsible for the purposes of this Agreement for any loss, destruction, alteration or disclosure of Customer Data caused by any third party.

5.8. The Customer acknowledges and agrees that Bud Systems shall process Customer Data in such a way to anonymise and remove any and all such personal data within the Customer Data that then may be used by Bud Systems at its discretion to provide its Services.

5.9. Each party shall provide the other promptly (or immediately on request) all information and / or data necessary to enable the requesting party to comply with its obligations under Data Protection Law (including, without limitation, as such relate to the exercising by a data subject of his or her rights, or the required reporting of personal data breaches, under Data Protection Law).

5.10. For the avoidance of doubt (and always in compliance with and to the extent required by Data Protection Law), any user of the Bud Platform will be able to access, download and/or request a transfer of their own personal data; where Bud agrees to a request to transfer such personal data and while this Agreement remains in place, the Customer will retain (again, subject to Data Protection Law) read only access to that personal data as it stands at the point of transfer.

## **6. CHARGES, PAYMENT AND AUDIT**

6.1. The Customer shall pay all Fees and any further consultancy and / or chargeable work due within the payment terms as detailed in the Service Agreement.

6.2. The Implementation Fee will be paid in full prior to Bud Systems commencing the Implementation Package.

6.3. Service Fees are calculated as a count of Active Learners as at midnight on the last day of the month multiplied by the Service Fee per learners as per the Service Agreement.

6.4. Bud Systems shall apply an RPI to the Service Fees from the date as specified in the Service Agreement and each 12 month period thereafter within the Initial Term. Bud Systems shall notify the Customer of any and all such RPI changes no less than 30 days prior to the implementation of the RPI.

6.5. Bud Systems shall apply an RPI to the List Price from 1<sup>st</sup> January each and every year. Bud Systems shall notify the Customer of any and all such RPI changes no less than 30 days prior to the implementation of the RPI.

6.6. The Customer shall reimburse Bud Systems for all actual, reasonable travel expenses including, but not limited to, airfare,

hotel and meals incurred by Bud Systems in performance of the Services. Wherever practicable, Bud Systems will notify the Customer of the nature and quantum of any such expenses in advance.

6.7. In any month where the number of Suspended Learners exceeds 5% of the total number of Active Learners, Bud Systems reserves the right to charge for the number of Suspended Learners exceeding 5% of Active Learners at the same rate as Active Learners.

6.8. All Fees and chargeable activities and reimbursed expenses stated or referred to in this Agreement are exclusive of value added tax, which shall be added to Bud Systems' invoice(s) at the appropriate rate.

6.9. Bud Systems shall invoice the Customer within 7 days of the last day of each month for all Fees, chargeable activity and reimbursed expenses during that month.

6.10. The Customer shall remit payment of any and all invoices within 30 days unless otherwise stated in the Service Agreement, except for the Implementation Fee as per clause 6.2 or where the payment method is Direct Debit per clause 6.11.

6.11. Where the payment method per the Service Agreement is Direct Debit, the Customer shall complete and return a Direct Debit form within 30 days of the Data of the Service Agreement.

6.12. In the instance of any invoice remaining unpaid after 10 days after the due date (excluding any Disputed Invoice as defined in Clause 6.13.3) and unless otherwise specifically stated, and without prejudice to any other rights and remedies of Bud Systems:

6.12.1. Bud Systems shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid;

6.12.2. Customer access to the System may be suspended or restricted. In that case, Bud Systems reserves the right to charge £500 to reinstate or reactivate full access, which will be added to the next monthly invoice; and

6.12.3. interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of Barclays Bank plc from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

6.13. In the event of a dispute arising out of or in connection with the Service Agreement, these Terms & Conditions or the performance, validity or enforceability of it (in particular in relation to an invoice or part thereof) then the parties shall follow the procedure set out in this clause:

6.13.1. Either party shall give to the other written notice of the dispute, setting out its nature and full particulars (a "**Dispute Notice**"), together with relevant supporting documents within 90 days of the dispute arising. Any such dispute regarding an Invoice or amounts payable must be raised within 30 days of the Invoice date.

6.13.2. A Dispute Notice served beyond the deadlines outlined in clause 6.13.1 may at the discretion of the receiving party, be deemed null and void.

6.13.3. On service of the Dispute Notice, any Invoices (or any part of an Invoice) recorded within the Dispute Notice, shall be deemed a "**Disputed Invoice**".

6.13.4. On service of the Dispute Notice, both parties shall act in good faith and within a reasonable (for the nature of the dispute) timeframe ;

6.13.5. if the parties are for any reason unable to resolve the dispute within fifteen (15) Business Days of it being referred to

them, the parties may refer the dispute to a mutually acceptable Expert, whose decision shall be final and binding on the parties. The parties shall bear their own costs in relation to any reference made to the Expert and the fees and all other costs of the Expert shall be borne jointly in equal proportions by the parties, unless otherwise directed by the Expert.

6.13.6. The Expert will be instructed to make a determination within thirty (30) Business Days.

For the purposes of this clause, "Expert" shall mean any individual or entity who, in the reasonable opinion of both parties, has the skill and experience to make the relevant determination given the nature and context of the dispute.

6.14. Bud Systems (or its nominee) may audit all necessary Customer or Authorised User documents, data, systems or sites in order to assess the Customer's compliance with this Agreement. Except as required by applicable law, such audit may be conducted no more than once in a twelve month period and shall be exercised with reasonable prior notice, in a manner so as to not substantially interfere with the Customer's normal conduct of business. Each such audit shall be conducted at Bud Systems' expense. The Customer shall immediately pay to Bud Systems the amount of any discrepancy of Fees that should have been paid versus Fees actually paid in the period under review plus interest.

## 7. PROPRIETARY RIGHTS

7.1. The Customer acknowledges and agrees that Bud Systems and/or its licensors own all intellectual property rights in the Bud Platform and the Services. Except as expressly stated herein, these Terms & Conditions does not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Bud Platform, Services or any related documentation.

7.2. Bud Systems confirms that it has all the rights in relation to the Bud Platform that are necessary to grant all the rights it grants under, and in accordance with, the terms of this Agreement.

7.3. Bud Systems shall indemnify the Customer against all damages and costs awarded by a court against the Customer arising out of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights in the UK arising out of or in connection with the Customer's use of the Bud Platform or receipt of the Services, provided that:

7.3.1. Bud Systems is given prompt notice of any such claim;

7.3.2. the Customer provides reasonable co-operation to Bud Systems in the defence and settlement of such claim; and

7.3.3. Bud Systems is given sole authority to defend or settle the claim.

## 8. CONFIDENTIALITY

8.1. Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not include information that:

8.1.1. is or becomes publicly known other than through any act or omission of the receiving party;

8.1.2. was in the other party's lawful possession before the disclosure;

8.1.3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or

8.1.4. is independently developed by the receiving party, which independent development can be shown by written evidence.

8.2. Subject to Clause 8.4, each party shall hold the other's Confidential Information in confidence and, unless required by applicable law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.

8.3. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.

8.4. A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by applicable law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Clause 8.4, it takes into account (as far as reasonably practicable) the reasonable requests of the other party in relation to the content of such disclosure.

8.5. The Customer acknowledges that the Bud Platform and the results of any performance tests of the Bud Platform and the Services constitute Bud Systems' Confidential Information.

8.6. Neither party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), except as required by applicable law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

8.7. The above provisions of this Clause 8 shall survive termination of this Agreement, however arising.

## 9. INDEMNITY

9.1. The Customer shall defend, indemnify and hold harmless Bud Systems against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with any use of the Bud Platform by the Customer in breach of the Service Agreement and these Terms & Conditions.

9.2. The above provisions of this Clause 9 shall survive termination of this Agreement, however arising.

## 10. LIMITATION OF LIABILITY

10.1. This Clause 10 sets out the entire financial liability of either party (including any liability for the acts or omissions of its employees, agents and sub-contractors):

10.1.1. arising under or in connection with the Service Agreement and these Terms & Conditions;

10.1.2. in respect of any use made by the Customer of the Services or the Bud Platform; and

10.1.3. in respect of any representation, misrepresentation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

10.2. Except as expressly and specifically provided in this Agreement:

10.2.1. the Customer assumes sole responsibility for results obtained from the use of the Bud Platform and the Services by the Customer, and for conclusions drawn from or activities enabled by such use. Bud Systems shall have no liability for any damage caused by errors or omissions in any data, information, instructions or scripts provided to Bud Systems by the Customer

or a third party in connection with the Services, or any actions taken by Bud Systems at the Customer's direction;

10.2.2. Bud Systems excludes any and all liability in respect of the availability or performance of the Bud Platform by the Customer as a consequential result of any script, document and / or attachment uploaded to the Bud Platform by the Customer;

10.2.3. Schedule 1 states the Customer's sole, full and exclusive right and remedy, and Bud Systems' only obligation and liability in respect of the availability of the Bud Platform or Services, or their non-availability; and

10.2.4. all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement.

10.3. Nothing in this Agreement excludes the liability of either party:

10.3.1. for death or personal injury caused by its negligence;

10.3.2. for fraud or fraudulent misrepresentation; or

10.3.3. for any other liability which cannot be excluded by applicable law.

10.4. Subject to Clauses 10.3:

10.4.1. neither party shall be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss costs, damages, charges or expenses however arising under this Agreement; and

10.4.2. either party's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited, on a per claim or per series of connected claims basis, to the Fees paid by the Customer to Bud Systems during the 12 months preceding the date on which the claim (or first of a series of connected claims) arose.

## 11. TERM AND TERMINATION

11.1. The Service Agreement shall commence on the Effective Date and is valid for the agreed Initial Term.

11.2. Upon the expiration of the Initial Term, the Agreement shall continue for successive one (1) month periods (a "Rolling Term") until otherwise terminated in accordance with these Terms & Conditions.

11.3. At any point during the last three months of the Initial Period, or at any time during the Rolling Term, either party may enter into negotiations in good faith for the terms and pricing of a new agreement. Upon commencement of any such new agreement that extends, replaces or otherwise supersedes the Agreement, the Agreement shall terminate immediately prior to the commencement of the new Agreement.

11.4. On or after the Initial Period, this Agreement may be terminated for convenience if:

11.4.1. the Customer notifies Bud Systems that it wishes to terminate the Agreement, in writing, with three month's notice; or

11.4.2. Bud Systems notifies the Customer that it wishes to terminate the Agreement, in writing, with three months' notice, in which case the Agreement shall terminate at the end of such notice period.

11.5. Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:

11.5.1. the other party fails to pay any undisputed amount (which, for the avoidance of doubt, includes any part of an invoice that is not formally disputed) due under this Agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;

11.5.2. the other party commits a material breach of any term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

11.5.3. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

11.5.4. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

11.5.5. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);

11.5.6. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clauses 11.5.3 to 11.5.5 (inclusive); or

11.5.7. the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

11.6. On termination of this Agreement for any reason:

11.6.1. all licences granted under this Agreement shall immediately terminate;

11.6.2. Bud Systems will provide the Customer with 60 days' read-only access to the system, with the ability to download Customer Data in Machine Readable format;

11.6.3. the Customer shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to Bud Systems;

11.6.4. if requested by the UK's Education and Skills Funding Agency (or successor) or other regulatory body, Bud Systems will transfer the Customer Data to that regulatory body (for example, in the case of any insolvency proceedings relating to the Customer);

11.6.5. any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected or prejudiced.

11.7. Should the Customer wish to maintain read-only access beyond the 60 day period set out in clause 11.6 (with the continued ability to download Customer Data in Machine Readable format), Bud Systems shall grant continued access upon payment monthly of the monthly Archive Access Fee. In the instance of any Archive Access Fees remain unpaid for a period of 30 days Bud Systems reserves the right to immediately withdraw availability of any archived data to the Customer.

## 12. VARIATION

12.1. No variation of the Service Agreement and / or these Terms & Conditions (other than changes to the Services or Bud Platform which Bud Systems is permitted to implement in accordance with Clause 2.12) shall be effective unless:

12.1.1. it is a variation to the Service Fees or any other charges payable by the Customer (apart from increases to Service Fees that Bud Systems is permitted to apply in accordance with the Service Agreement) where such variation is in writing and signed by the parties (or their authorised representatives); or

12.1.2. it is a variation which is only administrative in nature (as determined by Bud Systems, acting reasonably) where such variation is notified by Bud Systems to the Customer in accordance with Clause 13 (in which case such variation shall take effect 30 days after Customer receives such notification or on such later date (if any) notified by Bud Systems at the time); or

12.1.3. it is a variation which is necessitated by changes in law or regulation applicable to the Bud Platform or Services, to respond to security issues affecting the Bud Platform or to improve the security measures applicable to the Bud Platform (in each case as determined by Bud Systems, acting reasonably) where such variation is notified by Bud Systems to the Customer in accordance with Clause 13 (in which case such variation shall take effect immediately or within such other timeframe as notified by Bud Systems at the time); or

12.1.4. it is a variation which reflects any other contractual, operational or technical requirement or need where such variation is notified by Bud Systems to the Customer in accordance with Clause 13 and, unless the Customer responds to such notice within a period of 30 days to inform Bud Systems that it cannot accept such variation and therefore wishes to terminate this Agreement, such variation shall take effect on expiry of that 30 day period. Any such Customer termination of this Agreement will (unless otherwise agreed by the parties in writing) take effect on the expiry of that 30 day notice period.

## 13. NOTICES

13.1. Any notice required to be given under this Agreement shall be in writing (to include email). A notice, however delivered, shall be deemed to have been received when delivered (or if delivery is not between 9 am and 5.30pm on a Business Day, at 9 am on the first Business Day following delivery). The email address for delivery of notices for each party shall be as follows:

The Customer: Customer contact's email address set forth on the applicable Service Agreement

Bud Systems: [support@bud.co.uk](mailto:support@bud.co.uk)

## 14. GENERAL PROVISIONS

14.1. **Business Ethics:** Bud Systems is committed to the practice of responsible corporate behaviour. Through its business practices Bud Systems seeks to protect and promote the human rights and basic freedoms of all its employees and agents. Further, Bud Systems is committed to protecting the rights of all of those whose work contributes to the success of Bud Systems, including those employees and agents of suppliers to Bud Systems. Bud Systems is also committed to eliminating bribery and corruption. Bud Systems will follow its Business Ethical policy that can be found at [www.bud.co.uk](http://www.bud.co.uk).

14.2. **Force Majeure:** Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control, including, without limitation, strikes, failure of a utility service, third party data provider or transport or telecommunications network or the internet, riot, civil commotion,

malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, fire or flood. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations.

14.3. **Waiver:** A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given. Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

14.4. **Severance:** If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

14.5. **Entire Agreement:** The Service Agreement alongside these Terms & Conditions constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into the Service Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Nothing in this clause shall limit or exclude any liability for fraud.

14.6. **Assignment:** The Customer shall not, without the prior written consent of Bud Systems, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Service Agreement. Bud Systems may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

14.7. **No Partnership of Agency:** Nothing in the Service Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

14.8. **Third Party Rights:** The Service Agreement does not confer any rights on any person or party (other than the parties to this Agreement and (where applicable) their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

14.9. **Governing Law:** The Service Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the laws of England and Wales.

14.10. **Jurisdiction:** The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

## SCHEDULE 1 – AVAILABILITY

### 1. SERVICE AVAILABILITY

1.1. The Bud platform shall be available to the Customer after successful completion of the Implementation Services.

1.2. Bud Systems warrants (in accordance with clause 2 and 3 of this schedule) that access by the Customer to the Bud Platform

will be available for full operational use by the Authorised Users for no less than 99.9% of the time during Normal Business Hours (the “Uptime Service Level”).

### 2. AVAILABILITY MEASUREMENT

2.1. Availability of the Bud Platform shall be undertaken by Bud Systems where measurement begins on the first day of the each calendar month and calculated as total actual available minutes divided by total possible available minutes in that month (the “Uptime Actual Level”). Customer-caused or third party-caused outages or disruptions, or outages or disruptions attributable in whole or in part to force majeure events shall not be included in the total possible available minutes in that month.

2.2. On a monthly basis, Bud Systems shall notify the Customer of actual service availability over the past month, including whether the Uptime Service Level has been met in the period.

### 3. SERVICE CREDITS

3.1. If availability falls below the Uptime Service Level in a given calendar month (“Service Delivery Failure”), the Customer shall be entitled to an amount calculated as the product of the Uptime Service Level minus the Uptime Actual Level and the Service Fee otherwise payable for that month (“Service Credit”).

3.2. A Service Credit shall not be payable unless the Customer requests it within 90 Business Days of the end of the relevant month.

3.3. The Customer acknowledges and agrees that the terms of this Schedule 1 relating to Service Credits constitute a genuine pre-estimate of the loss or damage that the Customer would suffer as a result of any Service Delivery Failure, are an agreed and (in terms of protecting the Customer’s legitimate commercial interest) proportionate means of reducing the amount payable in respect of the Fees to reflect the service received by the Customer over the relevant period and are not intended to operate as a penalty for Bud Systems’ non-performance.

### 4. BROWSER SUPPORT

4.1. Bud Systems will support the latest versions of the following web browsers:

4.1.1. Edge

4.1.2. Chrome

4.1.3. Firefox

4.1.4. Safari

4.2. Bud Systems will support the latest version of Android and iOS access via native browsers Chrome and Safari.

## SCHEDULE 2 – MAINTENANCE & SUPPORT

### 1. GENERAL RESPONSIBILITIES

1.1. Bud Systems shall provide and maintain the Bud Platform and Services in accordance with the terms of the Agreement. In addition, Bud Systems shall:

1.1.1. respond to support requests within the stated timescales; and

1.1.2. take steps to escalate and resolve issues in an appropriate, timely manner, keeping the Customer updated.

1.2. The Customer shall use the Bud Platform and Services as intended under this Agreement, including by maintaining:

1.2.1. programmes;

1.2.2. Authorised Users and permissions through the ‘User Admin’ portal;



1.2.3. trainers' allocation through the 'Caseload Management' tool; and

1.2.4. employers through the 'Employer Management' portal.

1.2.5. In addition, the Customer shall notify Bud Systems of issues or problems in a timely manner; and reasonably co-operate (including by providing systems access or other required input on request) to assist Bud Systems fulfil its obligations regarding maintenance, updates and fault prevention.

## 2. MAINTENANCE EVENTS

2.1. For the purposes of these Terms & Conditions, "Maintenance Events" means:

2.1.1. routine, planned maintenance of the hosting equipment, facility, Bud Platform or other aspects of the Services that may require interruption, to the extent conducted as permitted by paragraph 2.2 below;

2.1.2. emergency maintenance conducted at any time; and

2.1.3. any other unscheduled maintenance, again to the extent conducted as permitted by paragraph 2.2 below.

2.2. Routine, planned maintenance of the hosting equipment, facility, Bud Platform or other aspects of the Services that may require interruption shall not be performed during Normal Business Hours. Bud Systems may interrupt the Services to perform emergency maintenance at any time. In addition, Bud Systems may interrupt the Services outside Normal Business Hours for unscheduled maintenance. Any Maintenance Events which occur during Normal Business Hours, and which were not requested or caused by the Customer or any Authorised User, shall be considered as an instance of non-availability for the purpose of the Uptime Service Level described in Schedule 1. Bud Systems shall at all times endeavour to keep any service interruptions to a minimum.

## 3. MAINTENANCE

3.1. Maintenance under these Terms & Conditions includes all regularly scheduled error corrections, software updates and improvements to features.

3.2. Bud Systems shall maintain and update the Bud Platform from time to time. Should the Customer determine that the Bud Platform includes a defect, the Customer may at any time file error reports as described in paragraph 4 below. During maintenance periods, Bud Systems may, at its discretion, upgrade versions, install error corrections and apply patches to the Bud Platform, which may require the customer to adapt business process from time to time.

## SCHEDULE 3 – TECHNICAL SUPPORT

### 1. CONTACT

1.1. In the event the Customer is required to raise a Technical Matter (as defined in clause 1.3 of this schedule) with Bud Systems, Bud Systems will accept any such Technical Matter raised by a Bud Expert (or any other contact as agreed in the Service Agreement) via:

1.1.1. email to support@bud.co.uk; or

1.1.2. via a web form from www.bud.co.uk ; or

1.1.3. via the Bud Platform widget; or

1.1.4. if within normal Business Hours via telephone on 0117 4400 420

1.2. Upon receipt of a Technical Matter as raised in accordance with paragraph 1.1 of this Schedule, Bud Systems shall identify the priority of the matter and respond to the Customer within the relevant Target Response Time (as detailed in

clause 1.3) corresponding to the priority of the technical matter reporting the required actions and plan to undertake any such actions to rectify the technical matter within the Target Resolution Time.

## 2. PRIORITY

2.1. A "Technical Matter", the "Priority", "Target Response Time" and "Target Resolution Time" shall be defined as:

Priority	Technical Matter	Target Response Time	Target Resolution Time
P1	An issue that causes a critical business impact such as no access to the Services, or a major loss of functionality for a critical path feature such as Application, Learning Delivery or ILR for all users. Resulting in a complete business stoppage with no workaround available.	30 minutes	1 Day
P2	An issue that causes a high business impact such as Tenant wide outage of a feature or severe reduction in usability for the majority of users, resulting in significant inefficiencies for the Customer.	60 minutes	3 Days
P3	A non-critical issue or an issue with a workaround that does not prohibit the business in continuing with utilising the Services. Typically impacts a single or minority number of users, with low/no financial impact.	4 hours	As agreed. to resolve within a scheduled product release where a software fix is required
P4	Cosmetic issues (layout, formatting etc), general enquiries, or requests for information.	1 Day	As agreed. to resolve within a scheduled product release where a software fix is required.

\*Target Resolution Time – a resolution could be in the form of a product update or a workaround that reduces or eliminates the impact to a P3.

2.2. The Target Response Time and Target Resolution Times as noted in 2.1 of Schedule 3 shall be within Normal Business Hours.

2.3. The Customer understands that failure by Bud Systems to adhere to the Target Response Time and / or the Target Resolution Time does not give rise to a liability nor claim in any such case where the only infringement is on the adherence to these timeframes.