



JISC LEARNING ANALYTICS SERVICES APPENDIX

TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires, the following words shall have the following meanings:

Add On Services	means the provision of certain other analytics services by an LA Supplier to the Institution via the DPS;
Add On Services Agreement	means an agreement between an LA Supplier and the Institution for the supply of Add On Services;
Affiliate	in relation to each Party and Amazon Web Services, means and includes each parent undertaking and each subsidiary undertaking of such parent undertaking from time to time, in each case as the terms " subsidiary undertaking " and " parent undertaking " are defined in Section 1162 of the Companies Act 2006;
Agreement	has the meaning set out in the Order Form;
Amazon Web Services	means Amazon Web Services, Inc or its applicable Affiliate;
Applicable EU Law	means any law of the European Union law (or the law of one of the Member States of the European Union);
Business Day	means any day which is not a Saturday, Sunday or a public holiday in England and Wales;
Charges	means the charges payable by the Institution to Jisc for the performance of the Learning Analytics Services. The Charges are set out in the Order Form and may be varied in accordance with Clause 4;
Claims	means claims, demands, proceedings or other actions;
Commencement Date	has the meaning set out in the Order Form;
Confidential Information	means all information in any form or medium concerning the business, affairs, technology, customers, suppliers, plans, strategy, pricing, Intellectual Property Rights, products or services of the disclosing Party or any of its Affiliates (or in the case of Jisc, any of its sub-contractors) together with all information in any form or medium designated as confidential by the disclosing Party but excluding the Institution Data;

Controller	has the meaning set out in the GDPR;
Data Protection Impact Assessment	means an assessment of the impact of the envisaged Processing operations on the protection of Personal Data, as required by Article 35 of the GDPR;
Data Protection Legislation	means any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction (as amended, consolidated or re-enacted from time to time) which relates to the protection of individuals with regards to the processing of Institution Data to which a Party is subject, including EC Directive 95/46/EC (the " DP Directive "), the Data Protection Act 1998 (the " DPA ") and Privacy and Electronic Communications (EC Directive) Regulations 2003 (up to and including 24 May 2018) and the GDPR (on and from 25 May 2018);
Data Protection Particulars	means, in relation to any Processing under this Agreement: <ul style="list-style-type: none"> (a) the subject matter and duration of the Processing; (b) the nature and purpose of the Processing; (c) the type of Personal Data being Processed; and (d) the categories of Data Subjects;
Data Quality Requirements	means those requirements set out in Article 5(1)(c) to (e) (inclusive) of the GDPR;
Data Subject	has the meaning set out in the GDPR;
Data Subject Request	means an actual or purported subject access request or notice or complaint from (or on behalf of) a Data Subject exercising his rights under the Data Protection Legislation;
Data Transfer	means transferring the Institution Data to, and / or accessing the Institution Data from and / or Processing the Institution Data within, a jurisdiction or territory that is a Restricted Country;
DPS	means the dynamic purchasing system maintained by Jisc under which third party suppliers can offer certain Add On Services to Jisc Customers;
EEA	means the European Economic Area;
First Expiry Date	has the meaning set out in the Order Form;
Force Majeure Event	means any cause beyond a Party's reasonable control affecting the performance of its obligations under this Agreement;
Freedom of Information Laws	means the Freedom of Information Act 2000 (and any Scottish equivalent), the Environmental Information Regulations 2004 (and any Scottish equivalent) and any subordinate legislation made under such legislation from time to time together with any guidance and/or codes of practice issued by the UK Information

	Commissioner or relevant Government Department in relation to such legislation;
GDPR	means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119/1, 4.5.2016;
Good Industry Practice	means, at any time, the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of similar services to the Learning Analytics Services to a customer like the Institution, such supplier seeking to comply with its contractual obligations in full and complying with all applicable laws (including the Data Protection Legislation);
Initial Term	has the meaning set out in Clause 2;
Institution Data	means: <ul style="list-style-type: none"> (a) all data and information relating to any Student or Institution Staff (including Personal Data, as such Personal Data is further described in the Data Protection Particulars) which: (i) is supplied or made available by or on behalf of the Institution to Jisc; (ii) is collected by Jisc from the Institution, any Student or Institution Staff; or (iii) is transmitted to or through Jisc or any of its Affiliates by the Institution, any Student or Institution Staff, in each case in connection with the Learning Analytics Services; and (b) any other Personal Data which the Institution agrees to provide or make available to Jisc for transfer into the Learning Records Warehouse in connection with the performance of the Learning Analytics Services;
Institution Staff	means any current or former member of staff or employee of the Institution;
Intellectual Property Rights	means any rights in or to intellectual property, including copyright (including rights in computer software and related rights), patents, database rights, designs, trademarks, know-how or confidential information and any other rights in respect of any other industrial or intellectual property, whether registrable or not and wherever existing in the world and including all rights to apply for any of the foregoing rights;
Jisc Customer	means any customer from time to time of Jisc or any of Jisc's Affiliates;
Jisc Instruction Form	means the instruction form (in the format notified or otherwise made available to the Institution from time to time, and to contain such information, as Jisc may require from time to time)

	pursuant to which an Institution instructs Jisc to transfer Institution Data held by Jisc or any of its Affiliates to an LA Supplier, in accordance with Clause 12.4;
Jisc Members	means those Jisc Customers that have been accepted by Jisc as a registered member of Jisc;
Jisc Site	means www.jisc.ac.uk (and any successor site designated by Jisc), as may be updated by Jisc from time to time;
LA Supplier	means a third party supplier of certain Add On Services that has been accepted onto the DPS;
Learning Analytics Services	means each of the learning analytics services which Jisc will make available to the Institution as indicated on the Order Form or as otherwise agreed in writing by the Parties;
Learning Records Warehouse	means the learning records warehouse used by Jisc in connection with the performance of the Learning Analytics Services. Further details about the Learning Records Warehouse are available on the Jisc Site;
Loss	means all losses, fines, liabilities, damages, costs, Claims, amounts paid in settlement and expenses (including legal fees, disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties);
Order Form	means the order form to which these Terms and Conditions are appended;
Parties	means the parties to this Agreement and " Party " shall be construed accordingly;
Personal Data	has the meaning set out in the GDPR and for the purposes of this Agreement includes Sensitive Personal Data;
Personal Data Breach	has the meaning set out in the GDPR (where the Personal Data directly affected by the breach of security is that described in the Data Protection Particulars) and, for the avoidance of doubt, includes a breach of Clause 9.1.3;
Personnel	means all persons engaged or employed from time to time by Jisc in connection with this Agreement, including employees, consultants, contractors and permitted agents;
Pilot Implementation Period	means the period of 6 months from the Commencement Date during which Jisc will provide the Learning Analytics Services to the Institution at no charge;
Processing	has the meaning set out in the GDPR (and " Process " and " Processed " shall be construed accordingly);
Processor	has the meaning set out in the GDPR;

Regulator	means the UK Information Commissioner's Office (including any successor or replacement body);
Regulator Correspondence	means any correspondence or communication (whether written or verbal) from the Regulator in relation to the Processing of the Institution Data;
Renewal Term	is defined in Clause 2;
Request for Information	is defined in Clause 16;
Restricted Country	means a country, territory or jurisdiction outside of the EEA which the EU Commission has not deemed to provide adequate protection in accordance with Article 25(2) of the DP Directive and/ or Article 45(1) of the GDPR (as applicable);
Security Requirements	means the requirements regarding the security of the Personal Data, as set out in the Data Protection Legislation (including, in particular, the seventh data protection principle of the DPA and/ or the measures set out in Article 32(1) of the GDPR (taking due account of the matters described in Article 32(2) of the GDPR)) as applicable;
Sensitive Personal Data	means Personal Data that incorporates such categories of data as are listed in Article 9(1) of the GDPR;
Service Levels	means any service levels set out on the Jisc Site from time to time applicable to the Learning Analytics Services;
Students	means any current or former student of the Institution;
Term	means the Initial Term and any extension to same pursuant to Clause 2;
Terms and Conditions	has the meaning set out in the Order Form;
Third Party Request	means a written request from any third party for disclosure of Institution Data where compliance with such request is required or purported to be required by law or regulation; and
Year	means each twelve (12) month period commencing on the Commencement Date or the anniversary of that date (in the case of subsequent Years).

1.2 In this Agreement, unless the context otherwise requires:

- 1.2.1 the singular shall include the plural and vice versa, and references to one gender shall include all genders;
- 1.2.2 references to a "**person**" include any individual, firm, body corporate (wherever incorporated), university, government, state or agency of a state or any joint venture, association, partnership, works council or employee representative body (whether or not having separate legal personality);

- 1.2.3 references to "**Recitals**" and "**Clauses**" are to recitals and clauses of this Agreement;
 - 1.2.4 references to a "**Party**" include that Party's personal representatives, successors, and permitted assignees and sub-licensees;
 - 1.2.5 any phrase introduced by the terms "**including**", "**include**", "**in particular**" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
 - 1.2.6 any reference to a statute, statutory provision or statutory instrument includes a reference to that statute, statutory provision or statutory instrument together with all the rules and regulations made under it as from time to time amended, consolidated or re-enacted.
- 1.3 In the case of conflict or ambiguity between any provision contained in this Agreement the order of precedence shall be as follows:
- 1.3.1 the Order Form;
 - 1.3.2 the Terms and Conditions; and
 - 1.3.3 any other document referred to in this Agreement.

2. **TERM**

- 2.1 This Agreement commences on the Commencement Date and, subject to earlier termination in accordance with this Agreement, including termination in accordance with Clause 2.2, will continue in full force and effect until the First Expiry Date (the "**Initial Term**").
- 2.2 During the Pilot Implementation Period the Institution will have the right to terminate this Agreement at any time upon written notification to Jisc. Following expiry of the Pilot Implementation Period and during the remainder of the Initial Term the Institution may terminate this Agreement by giving not less than 3 months' written notice of termination to Jisc, such termination to take effect only on the expiry of the Initial Term.
- 2.3 Following expiry of the Initial Term this Agreement will, subject to earlier termination in accordance with this Agreement, automatically renew for successive 12 month periods (each a "**Renewal Term**") unless and until terminated by either Party giving not less than 3 months' written notice of termination to the other, such termination to take effect only on expiry of the then current Renewal Term.

3. **LEARNING ANALYTICS SERVICES**

- 3.1 Jisc will provide the Learning Analytics Services in accordance with this Agreement, Good Industry Practice and using reasonable skill and care. In addition, Jisc will use reasonable endeavours to ensure that it meets the Service Levels.
- 3.2 Jisc may from time to time make changes to the Learning Analytics Services and / or the Service Levels. Where changes are made to the Learning Analytics Services and / or Service Levels, or where Jisc appoints a sub-contractor pursuant to Clause 11.1, details of those changes will be posted on the Jisc Site and email notification sent to the Institution at the address stated on the Order Form. As such, the Institution should ensure that it checks the Jisc Site regularly for any changes.

4. CHARGES

- 4.1 In consideration of the provision of the Learning Analytics Services to the Institution, the Institution shall pay the Charges to Jisc in accordance with the payment timetable specified in the Order Form.
- 4.2 Jisc will deliver invoices to the Institution in accordance with the payment timetable set out in the Order Form. Subject to Clause 4.3, all due and valid invoices will be paid by the Institution within 30 days of its receipt.
- 4.3 Should the Institution wish to dispute an invoice it will notify Jisc in writing of the nature and details of the dispute within 30 days of receipt of the invoice, provided that nothing in this clause will excuse the Institution from its payment obligations in respect of any undisputed part of the invoice.
- 4.4 If the Institution fails to pay any undisputed Charges by the due date, Jisc may, in its absolute discretion, charge the Institution interest on late payment from the due date up to the date of actual payment, after as well as before judgment, at the rate of 2% above the base lending rate of HSBC Bank plc then in force. Such interest will be payable by the Institution on demand and will accrue on a daily basis.
- 4.5 All Charges are stated exclusive of value added tax (and any other taxes), which if applicable will be added by Jisc to its invoices at the prevailing rate as at the date of the applicable invoice and will be paid by the Institution accordingly.
- 4.6 The Institution shall pay all sums that it owes under this Agreement without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.
- 4.7 Where the Institution has received any of the Learning Analytics Services on a free of charge or discounted basis due to the Institution's status as a Jisc Member, if the Institution subsequently ceases (for whatever reason) to be a Jisc Member during the Term, then Jisc reserves the right to invoice the Institution for the charges (or the difference in charges, as applicable) that would have been payable during that free of charge or discounted period, based on the rate for non-Jisc Members set out on the Jisc Site. The Institution agrees to pay such invoice in accordance with Clause 4.2 above.
- 4.8 Following expiry of the Initial Term, Jisc reserves the right to amend the Charges from time to time. Jisc will give a minimum of 3 months' notice of any amendment. If the Institution then wishes to terminate this Agreement it may do so by giving written notice of termination to Jisc within 2 months' of receiving Jisc's notice of amendment. Termination will then come into effect from the date on which the amended Charges would otherwise apply. Information on the charges that apply to the Learning Analytics Services can be found on the Jisc Site.

5. INSTITUTION DATA

- 5.1 The Institution shall provide the Institution Data to Jisc in order for Jisc to Process the Institution Data in connection with the performance of the Learning Analytics Services.
- 5.2 Where the Institution transfers the Institution Data to Jisc, it shall do so in the format as set out on the Jisc Site, or as otherwise agreed in writing between the Parties. The Institution Data may be transferred to Jisc by the Institution in more than one tranche, and the terms of this Agreement shall apply on each and every occasion that Institution Data is transferred.

- 5.3 If requested to do so in writing by the Institution, Jisc will acknowledge receipt of any Institution Data transferred to it by the Institution under this Agreement.
- 5.4 Jisc will not share aggregated data outputs or anonymised data sets with any other institutions for the purposes of benchmarking unless the Institution explicitly opts into a benchmarking group or similar data sharing group by written agreement.
- 5.5 Further details on how Jisc will access and use the Institution Data in connection with the performance of the Learning Analytics Services can be found on the Jisc Site.

6. CUSTOMER OBLIGATIONS

- 6.1 The Institution acknowledges and agrees that in order for Jisc to perform the Learning Analytics Services, Jisc (or its sub-contractors) may from time to time need to access certain of the Institution's information technology environments and install plug-in software in those environments. Such access will be solely as required for performing the Learning Analytics Services and the Institution will co-operate with reasonable requests of Jisc to enable such access. Further details of the information technology environments that Jisc will require access to and the plug-in software that will need to be installed can be found on the Jisc Site.

7. DATA PROTECTION ARRANGEMENTS

- 7.1 The Parties shall each Process the Institution Data in accordance with the terms of this Agreement. The Parties acknowledge that the factual arrangement between them dictates the classification of each Party in respect of the Data Protection Legislation. Notwithstanding the foregoing, the Parties anticipate and agree that the Institution shall act as a Controller and Jisc shall act as a Processor, as follows:

- 7.1.1 The Institution shall be a Controller where it is Processing the Institution Data in connection with its role as the employer of the Staff and/or the provider of higher education services to the Students; and

- 7.1.2 Jisc shall be a Processor where it is Processing the Institution Data in connection with its provision of the Learning Analytics Services to the Institution.

- 7.2 Each of the Parties acknowledges and agrees that the following table sets out an accurate description of the Data Protection Particulars:

The subject matter and duration of the Processing	The Personal Data will be stored by Jisc, and will only be further Processed if the Institution requests (and Jisc agrees to provide) Learning Analytics Services in addition to the storage of the Personal Data in the Learning Records Warehouse. If Learning Analytics Services are agreed, Personal Data will be analysed to provide learner level information, and combined to provide grouped information, for example at a course or module level. In addition, the Institution may request services that require the Personal Data to be anonymised or de-identified. All such Processing will be for the duration of the Term.
The nature and purpose of the Processing	The Personal Data will be Processed in order to provide Learning Analytics Services ordered by the Institution.

<p>The type of Personal Data being Processed</p>	<p><u>Personal Data about students:</u></p> <p>Demographic information about the data subject including, but not limited to, student id, data of birth, username, first name, last name, institutional email address, address, accommodation type, socio-economic group, parents education background, gender;</p> <p>Information about the course a data subject is taking including, but not limited to, course/module name, start and end date, course and module marks and outcome of the course;</p> <p>Information about the data subject’s achievements including, but not limited to, assignment identifiers, initial and agreed marks; and</p> <p>Information about the data subject’s learning activity including, but not limited to, the type of activity, system, time, the module or course it relates to and the result of the activity.</p> <p><u>Personal Data about staff including, but not limited to:</u> first name, surname and Institution email address.</p>
<p>The categories of Data Subjects</p>	<p>The Data Subjects are students and staff of the Jisc Customer.</p>

8. CONTROLLER OBLIGATIONS

8.1 The Institution shall comply with its obligations under the Data Protection Legislation.

8.2 The Institution shall (as the Controller in respect of the Processing of Institution Data):

- 8.2.1 make due notification to any relevant Regulator and shall comply at all times with the Data Protection Legislation;
- 8.2.2 implement and maintain appropriate technical and organisational security measures to comply with at least the obligations imposed on a Controller by the Security Requirements;
- 8.2.3 ensure it is not subject to any prohibition or restriction which would:
 - (a) prevent or restrict it from disclosing or transferring the Institution Data to Jisc, as required under this Agreement; and
 - (b) prevent or restrict it from granting Jisc access to the Institution Data, as required under this Agreement;

- (c) prevent or restrict Jisc from Processing the Institution Data, as required under this Agreement; or
 - (d) prevent or restrict Jisc from transferring or making available Institution Data to an LA Supplier in accordance with this Agreement;
- 8.2.4 ensure that all fair processing notices have been given (and/or, as applicable, consents obtained) and are sufficient in scope to enable Jisc to Process the Institution Data as required in order to obtain the benefit of its rights and to fulfil its obligations under this Agreement in accordance with the Data Protection Legislation;
- 8.2.5 implement appropriate systems and procedures (where relevant) to ensure that any Institution Data disclosed, transferred or made available to Jisc is: (i) adequate, relevant and not excessive; (ii) accurate, and, where necessary, kept up to date; and (iii) not retained for longer than is necessary (in each case as required by the Data Quality Requirements); and
- 8.2.6 notify Jisc promptly (and in any event within forty-eight (48) hours) following its receipt of any Regulator Correspondence.

9. PROCESSOR OBLIGATIONS

- 9.1 Jisc (as a Processor in relation to any Institution Data Processed by (or on behalf of) the Institution pursuant to this Agreement) undertakes to the Institution that it shall:
- 9.1.1 Process the Institution Data for and on behalf of the Institution in connection with the performance of the Learning Analytics Services only and for no other purpose in accordance with the terms of this Agreement and (without prejudice to Clause 12) any instructions from the Institution;
 - 9.1.2 unless prohibited by law, promptly notify the Institution (and in any event within forty-eight (48) hours of becoming aware of the same) if it considers, in its opinion (acting reasonably) that it is required by Applicable EU Law to act other than in accordance with the instructions of the Institution, including where it believes that any of the Institution's instructions under Clause 9.1.1 infringes any of the Data Protection Legislation;
 - 9.1.3 implement and maintain appropriate technical and organisational security measures to comply with at least the obligations imposed on a Controller by the Security Requirements. A description of the technical and organisational security measures that Jisc will implement and maintain from time to time is set out on the Jisc Site;
 - 9.1.4 take all reasonable steps to ensure the reliability and integrity of any of the Personnel who shall have access to the Institution Data, and ensure that each member of Personnel shall have entered into appropriate contractually-binding confidentiality undertakings;
 - 9.1.5 notify the Institution promptly, and in any event within forty-eight (48) hours, upon becoming aware of any actual or suspected, threatened or 'near miss' Personal Data Breach, and:
 - (a) implement any measures necessary to restore the security of compromised Institution Data;

- (b) assist the Institution to make any notifications to the Regulator and affected Data Subjects;
- 9.1.6 notify the Institution promptly (and in any event within forty-eight (48) hours) following its receipt of any Data Subject Request or Regulator Correspondence and shall:
 - (a) not disclose any Institution Data in response to any Data Subject Request or Regulator Correspondence without the Institution's prior written consent; and
 - (b) provide the Institution with all reasonable co-operation and assistance required by the Institution in relation to any such Data Subject Request or Regulator Correspondence;
- 9.1.7 not disclose Institution Data to a third party in any circumstances without the Institution's prior written consent, other than:
 - (a) in relation to Third Party Requests where Jisc is required by law to make such a disclosure, in which case it shall use reasonable endeavours to advise the Institution in advance of such disclosure and in any event as soon as practicable thereafter, unless prohibited by law or regulation from notifying the Institution;
 - (b) to Jisc's employees, officers, representatives and advisers who need to know such information for the purposes of Jisc performing its obligations under this Agreement and in this respect Jisc shall ensure that its employees, officers, representatives and advisers to whom it discloses the Institution Data are made aware of their obligations with regard to the use and security of Institution Data under this Agreement;
 - (c) to a sub-contractor appointed in accordance with Clause 11; and
 - (d) to comply with a specific request from the Institution, in accordance with Clause 12.
- 9.1.8 not make (nor instruct or permit a third party to make) a Data Transfer without putting in place measures to ensure the Institution's compliance with Data Protection Legislation;
- 9.1.9 on the written request of the Institution, allow representatives of the Institution to audit Jisc in order to ascertain compliance with the terms of this Clause 9.1 and/ or to provide the Institution with reasonable information to demonstrate compliance with the requirements of this Clause 9.1, provided that:
 - (a) the Institution shall only be permitted to exercise its rights under this Clause 9.1.9 no more frequently than once per Year (other than where an audit is being undertaken by an Institution in connection with an actual or 'near miss' Personal Data Breach, in which case, an additional audit may be undertaken each Year by the Institution within thirty (30) days of the Institution having been notified of actual or 'near miss' Personal Data Breach);
 - (b) each such audit shall be performed at the sole expense of the Institution;
 - (c) the Institution shall not, in its performance of each such audit, unreasonably disrupt the business operations of Jisc;

- (d) the Institution shall comply with Jisc's health and safety, security, conduct and other rules, procedures and requirements in relation to Jisc's property and systems which have been notified by Jisc to the Institution in advance; and
- (e) in no case shall the Institution be permitted to access any data, information or records relating to any other customer of Jisc.

9.1.10 except to the extent required by Applicable EU Law, on the earlier of:

- (a) the date of termination or expiry of this Agreement (as applicable); and/or
- (b) the date on which the Institution Data is no longer relevant to, or necessary for, the performance of the Learning Analytics Services,

cease Processing any of the Institution Data and, within sixty (60) days of the date being applicable under this Clause 9.1.10, return or destroy (as directed, in writing, by the Institution) the Institution Data belonging to, or under the control of, the Institution and ensure that all such data is securely and permanently deleted from its systems, provided that Jisc shall be entitled to retain copies of the Institution Data for evidential purposes and to comply with legal and/or regulatory requirements;

9.1.11 comply with the obligations imposed upon a Processor under the Data Protection Legislation; and

9.1.12 assist the Institution in ensuring compliance with the obligations pursuant to Articles 32 to 36 of the GDPR taking into account the nature of Processing and the information available to Jisc, provided that Jisc shall be entitled to charge a fee to the Institution (on a time and materials basis and at such rate notified by Jisc to the Institution from time to time) in respect of providing any such assistance to the Institution.

9.2 Notwithstanding anything in this Agreement to the contrary, this Clause 9 shall continue in full force and effect for so long as Jisc Processes any Institution Data.

10. **INTELLECTUAL PROPERTY RIGHTS**

10.1 The Parties acknowledge and agree that the Institution shall retain ownership of the Institution Data.

10.2 With effect from such time as the Institution provides Jisc with, or makes available to Jisc, the Institution Data, the Institution hereby grants or shall procure the grant of a fully paid and royalty-free, worldwide, non-exclusive, transferable (in accordance with Clause 19) and sub-licensable licence to Jisc to access and use the Institution Data (including any Intellectual Property Rights in the Institution Data) in connection with the performance of the Learning Analytics Services in accordance with, and subject to, the terms of this Agreement, and any instructions as notified by the Institution from time to time. Such licence shall subsist for the Term and, to enable Jisc to comply with its obligations under Clause 9.1.10, for a period of sixty (60) days thereafter.

10.3 Any Intellectual Property Rights created or generated by or on behalf of Jisc, its Affiliates or any sub-contractor of Jisc in connection with the performance of the Learning Analytics Services and Processing of the Institution Data shall be owned by Jisc or the relevant Affiliate or sub-contractor (as applicable).

10.4 Except as expressly set out in this Agreement, neither Party will acquire any right, title or interest in or to the Intellectual Property Rights of the other Party (or its Affiliates or sub-contractors) that has been made available to, or is accessed by, that Party pursuant to this Agreement.

11. SUB-CONTRACTORS

11.1 Jisc may from time to time use sub-contractors (including its Affiliates) to perform all or any part of its obligations under this Agreement. Jisc shall notify the Institution prior to appointing a sub-contractor in accordance with Clause 3.2. The Institution may object to the appointment of any sub-contractor and Jisc shall reasonably take into account the views of the Institution in appointing any such sub-contractor, but for the avoidance of doubt the appointment of any sub-contractor shall be at Jisc's absolute discretion and Jisc shall have no obligation to act in accordance with any objection raised by the Institution. Information regarding the sub-contractors Jisc uses from time to time in connection with the performance of the Learning Analytics Services can be found on the Jisc Site.

11.2 Jisc may from time to time disclose Institution Data to its sub-contractors (or allow its sub-contractors to access Institution Data) for Processing solely in connection with the performance of the Learning Analytics Services.

11.3 Where Jisc uses a sub-contractor to Process Institution Data for or on its behalf, it will ensure that the sub-contractor contract (as it relates to the Processing of Personal Data) is on terms which are substantially the same as, and in any case no less onerous than, the terms set out in Clause 9 of this Agreement; provided that, in the case of Jisc's appointment of (i) an Affiliate of Jisc, and (ii) Amazon Web Services, Jisc's obligations under this Clause 11.3 shall:

11.3.1 be limited to ensuring that the sub-contract is on terms which are substantially the same as the terms set out in Clause 9 of this Agreement; and

11.3.2 apply on and from 25 May 2018.

11.4 Jisc shall remain liable to the Institution for the acts, errors and omissions of any of its sub-contractors to whom it discloses Institution Data, and shall, be responsible to the Institution for the acts, errors and omissions of such sub-contractor as if they were Jisc's own acts, errors and omissions to the extent that Jisc would be liable to the Institution under this Agreement for those acts and omissions.

11.5 For the purposes of this Agreement, an LA Supplier acting in its capacity of providing Add On Services to the Institution shall not constitute a sub-contractor of Jisc.

12. ADD ON SERVICES

12.1 The Institution may from time to time opt to receive Add On Services.

12.2 The decision as to whether the Institution will contract with an LA Supplier is a decision for the Institution. The Institution acknowledges and agrees that:

12.2.1 should it wish to receive Add On Services from an LA Supplier, it will enter into an Add On Services Agreement with the LA Supplier;

12.2.2 no warranty or guarantee is given by Jisc regarding the LA Supplier;

12.2.3 the Institution shall be responsible for satisfying itself that entering into any Add On Services Agreement does not breach any relevant public procurement regulations;

- 12.2.4 the Institution shall be responsible for agreeing the terms of the Add On Services Agreement with the LA Supplier, ensuring that the terms of the Add On Services Agreement are, in the opinion of the Institution, sufficient, adequate and appropriate and ensuring that the Add On Services Agreement incorporates, in an appropriate manner, any terms Jisc has specified the LA Supplier should include in the Add On Services Agreement; and
- 12.2.5 it is responsible for ensuring that any Add On Services (and any assurances or guarantees made or given by the LA Supplier regarding the technical and organisational measures it implements and maintains to protect the Institution Data) are fit for the Institution's purposes and meet with its requirements, and no warranty or guarantee is given by Jisc in respect of such matters.
- 12.3 The Institution acknowledges and agrees that Jisc is not responsible or accountable for and shall have no liability whatsoever in relation to the conduct of LA Suppliers in relation to the Add On Services; the terms of the Add On Services Agreement; the performance or non-performance of any Add On Services Agreement; and any information or data transferred directly between the Institution and the LA Supplier.
- 12.4 Jisc may from time to time transfer or make available Institution Data to an LA Supplier where instructed to do so by the Institution. Jisc is under no obligation to transfer or make available Institution Data to any LA Supplier unless and until it has received a completed Jisc Instruction Form from the Institution to do so. Jisc shall comply with each such Jisc Instruction Form as soon as practicable following receipt of same provided Jisc is satisfied as to the content of the Jisc Instruction Form. The Institution shall provide Jisc with such other information that Jisc requires from time to time to enable Jisc to verify any information set out in a Jisc Instruction Form.
- 12.5 In no circumstances shall Jisc be a party to an Add On Services Agreement. Any issues the Institution has with the performance of the LA Supplier or the Add On Services should be raised with the LA Supplier.
13. **WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS**
- 13.1 Each Party hereby warrants, represents and undertakes to the other Party that:
- 13.1.1 this Agreement is executed by a duly authorised representative of that Party;
- 13.1.2 it has, and will have for the duration of this Agreement, full capacity and authority required to enter into this Agreement and perform its obligations as set out in this Agreement;
- 13.1.3 it will comply with all applicable laws and other governmental, statutory or regulatory requirements and guidance which may from time to time be applicable in relation to the subject matter of this Agreement; and
- 13.1.4 it has, at the date of this Agreement, obtained and will, for the duration of this Agreement, maintain all licences, rights, permits, permissions, certificates, qualifications, consents and regulatory approvals required lawfully and properly to perform its obligations, and grant the rights granted by it, under this Agreement.
- 13.2 The Institution hereby warrants, represents and undertakes to Jisc that it has obtained all consents and licenses necessary for the transfer to, and use by, Jisc of the Institution Data in accordance with this Agreement.

- 13.3 Jisc warrants, represents and undertakes to the Institution that it will use reasonable endeavours to ensure that it does not introduce any virus or other specific vulnerability into any information technology environment used by the Institution when installing software in those information technology environments pursuant to Clause 6.1.
- 13.4 Each Party's representations, warranties and undertakings are limited to those set out in this Agreement and any implied conditions or warranties are excluded to the fullest extent permitted by law.
14. **CONFIDENTIALITY**
- 14.1 The provisions of Clauses 8 and 9 shall apply in relation to the use and disclosure of Institution Data.
- 14.2 Each Party undertakes that it shall not, at any time during the Term or thereafter, disclose to any person any Confidential Information of the other Party, except as permitted by Clause 14.4.
- 14.3 Neither Party shall use the other Party's Confidential Information for any purpose other than to perform its obligations or exercising its rights under this Agreement.
- 14.4 Each Party may disclose the other Party's Confidential Information:
- 14.4.1 to its employees, officers, representatives, sub-contractors, advisers and / or Affiliates who need to know such information for the purposes of the Party exercising its rights or carrying out its obligations under this Agreement. Each Party shall ensure that its employees, officers, representatives, sub-contractors, advisers and Affiliates to whom it discloses the other Party's Confidential Information comply with this Clause 14 and are made aware of their obligations with regard to the security and protection of Confidential Information under this Agreement; and
 - 14.4.2 as may be required by law, court order or any governmental or regulatory authority.
- 14.5 In relation to the Confidential Information of the disclosing Party, the receiving Party agrees:
- 14.5.1 to use, as a minimum, the same degree of care it uses to protect its own Confidential Information of similar sensitivity, but in any event all reasonable care, to prevent unauthorised use, dissemination or publication of such information;
 - 14.5.2 not to reproduce, use or exploit such information for its own or any third party's benefit;
 - 14.5.3 to make copies of such information only as strictly necessary and not transmit it outside its usual place of business;
 - 14.5.4 in disclosing any Confidential Information as permitted by this Agreement, to comply with any applicable laws controlling or relating to the export of information; and
 - 14.5.5 to advise the disclosing Party promptly of any unauthorised use or disclosure of the disclosing Party's Confidential Information of which it becomes aware.
- 14.6 The obligations in Clause 14.1 do not apply to information which the receiving Party can show by reference to documentary or other evidence:
- 14.6.1 was rightfully in its possession prior to disclosure to it by the other Party and in respect of which that Party is not under an existing obligation of confidentiality;

- 14.6.2 is already public knowledge or which becomes so at a future date (otherwise than as a result of breach of Clause 14.1 or of any other duty of confidentiality relating to that information);
 - 14.6.3 is received from a third party who is not under an obligation of confidentiality (express or implied) in relation to the information;
 - 14.6.4 is developed independently without access to, or use or knowledge of, the Confidential Information; or
 - 14.6.5 where the receiving Party is Jisc, is disclosed by Jisc to the bodies responsible for the funding of Higher and Further Education in England, Scotland, Wales and Northern Ireland as constituted from time to time and any other bodies which elect to participate in the funding of Jisc, provided that such information is disclosed under a duty of confidentiality.
- 14.7 On request by the disclosing Party, the receiving Party will immediately cease to use the disclosing Party's Confidential Information and, subject to Clause 14.8, will return or permanently and securely destroy, as the disclosing Party directs, all such Confidential Information and any other data, information, materials and records, which contains or is based on such Confidential Information, so that no such Confidential Information is retained by the receiving Party.
- 14.8 The receiving Party:
- 14.8.1 may retain one copy of the disclosing Party's Confidential Information if required for mandatory legal or regulatory reasons; and
 - 14.8.2 will not be required to remove any of the disclosing Party's Confidential Information that has been backed-up for archiving or business continuity purposes in the ordinary course of business.

15. **LIABILITY**

- 15.1 Subject to Clauses 15.2 and 15.3, each Party's aggregate liability to the other Party in respect of all claims arising in a given Year out of, or in connection with, this Agreement (including as a result of breach of contract, negligence or any other tort, under statute or otherwise) will in no event exceed in aggregate the greater of:
- 15.1.1 a sum equal to 100% of the Charges paid and payable under this Agreement to Jisc in that Year; and
 - 15.1.2 £10,000.
- 15.2 Subject to Clause 15.3, neither Party will be liable to the other for:
- 15.2.1 any loss (whether direct or indirect) of revenue or profits;
 - 15.2.2 any loss (whether direct or indirect) of anticipated savings;
 - 15.2.3 any loss (whether direct or indirect) of business opportunity;
 - 15.2.4 any loss (whether direct or indirect) of goodwill or injury to reputation; or
 - 15.2.5 indirect, consequential or special loss or damage,

in each case arising out of, or in connection with, this Agreement, including as a result of breach of contract, negligence or any other tort (under statute or otherwise) and regardless of whether the defendant party knew or had reason to know of the possibility of the loss, injury or damage in question.

15.3 Nothing in this Agreement will exclude, limit or restrict:

15.3.1 either Party's liability for:

- (a) death or personal injury resulting from the negligence of that Party (or its officers, agents or employees);
- (b) fraud or fraudulent misrepresentation committed by that Party (or its officers, agents or employees); or
- (c) any other matter in respect of which liability cannot by applicable law be limited; and

15.3.2 the Institution's liability in respect of the Charges due and payable by the Institution hereunder.

16. **FREEDOM OF INFORMATION OBLIGATIONS**

16.1 Jisc is not subject to the requirements of the Freedom of Information Laws and is not obliged to respond to requests for information under the Freedom of Information Laws ("**Request for Information**"). Without prejudice to the foregoing, and subject to the Institution's compliance with Clause 16.2, Jisc will endeavour to inform the Institution within two (2) Business Days and endeavour to respond to any Request for Information in the spirit of the Freedom of Information Laws where reasonably able to do so. Jisc and the Institution will assist and cooperate with each other if a Request for Information is received by Jisc.

16.2 Jisc acknowledges that the Institution will be obliged to respond to any Request for Information as it is subject to the requirements of the Freedom of Information Laws. The Institution shall be responsible for determining in its absolute discretion and, notwithstanding any other provision in this Agreement or any other agreement, whether any information is exempt from disclosure in accordance with the provisions of the Freedom of Information Laws. Without prejudice to the foregoing, if the Institution receives a Request for Information and such request includes commercially sensitive information or Confidential Information of Jisc under the Freedom of Information laws, the Institution shall, as soon as reasonably practicable, notify Jisc of such request and shall consult with Jisc and consider any representations which Jisc may make in relation to the requested disclosure prior to deciding whether to comply with or to refuse the request (in whole or in part).

16.3 Jisc acknowledges that basic details of this Agreement may be included in the appropriate online information asset register under the Institution's publication scheme.

17. **TERMINATION**

17.1 Either Party may terminate this Agreement (in whole or in part) with immediate effect by giving notice in writing to the other Party if:

17.1.1 the other Party commits a material breach of this Agreement (being a single event or series of events which are together a material breach) which is either not capable of being remedied or, if the breach is capable of being remedied, the other Party fails to

remedy such breach within thirty (30) days of receiving written notice requiring it to do so; or

17.1.2 any encumbrancer takes possession of or a receiver, administrative receiver or similar officer is appointed over any of the property or assets of the other Party or if the other Party makes any voluntary arrangement with its creditors or becomes subject to an administration order or has an administrator appointed or goes into liquidation or has a resolution for its winding-up passed (except for the purpose of amalgamation or reconstruction not involving insolvency where the resulting entity agrees to be bound by or assumes the obligations imposed on the other Party) or anything analogous to any of these events under the law of any jurisdiction occurs in relation to the other Party or if the other Party cease or threatens to cease to carry on business.

17.2 The Institution may terminate this Agreement in accordance with Clauses 2.2, 2.3, 4.8 or 20.

17.3 Jisc may terminate this Agreement in accordance with Clauses 2.3 or 20.

18. CONSEQUENCES OF TERMINATION

18.1 The termination of this Agreement (howsoever caused) will not affect any rights and/or liabilities of either Party which have accrued before termination or expiry, or any provision of this Agreement which expressly or by implication is intended to come into or continue in effect on or after termination or expiry.

18.2 The rights and obligations of the Parties under this Agreement which are intended to continue beyond the termination or expiry of this Agreement (including those under Clause 8 (*Controller Obligations*), Clause 9 (*Processor Obligations*), Clause 10 (*Intellectual Property Rights*), Clause 14 (*Confidentiality*), Clause 15 (*Liability*), Clause 18 (*Consequences of Termination*), Clause 21.2 (*Rights of Third Parties*), and Clause 23 (*Governing Law and Jurisdiction*)) shall continue in full force and effect.

19. ASSIGNMENT

19.1 Either Party may assign, transfer or otherwise dispose of any of its rights, liabilities and/or obligations under this Agreement on a temporary or permanent basis to an Affiliate without the prior written consent of the other Party.

19.2 Subject to Clause 19.1, neither Party may assign, transfer or dispose in any way any of its rights, liabilities and/or obligations under this Agreement on a temporary or permanent basis to any third party (other than to an Affiliate in accordance with Clause 19.1) without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed).

20. FORCE MAJEURE

20.1 Notwithstanding anything herein to the contrary but subject to Clause 20.2, neither Party will be liable for any delay or failure in performance of any part of this Agreement, to the extent such delay or failure is attributable to a Force Majeure Event.

20.2 Where a Party is prevented from carrying out its obligations as a result of a Force Majeure Event, it will notify the other Party immediately and will agree an action plan with the other Party (each Party acting reasonably), at the cost of the Party prevented from carrying out its obligations as a result of the Force Majeure Event, to mitigate the effects of the Force Majeure Event on the performance by that Party of its obligations under and in accordance with this Agreement.

20.3 If either Party is prevented from performing its obligations for more than twenty five (25) Business Days due to a Force Majeure Event then either Party will be entitled to terminate this Agreement without liability to the other forthwith on giving written notice of termination to the other.

21. GENERAL TERMS

21.1 The Parties acknowledge that in entering into this Agreement they are not relying on, and shall have no rights or remedies (whether in tort, under statute or otherwise) in respect of any statements, collateral or other warranties, assurances, undertakings or representations (whether innocently or negligently made) by another Party.

21.2 A person who is not a Party to this Agreement has no rights to enforce any term of this Agreement (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise).

21.3 The failure to exercise, or delay in exercising, a right, power or remedy provided by this Agreement or by law shall not constitute a waiver of that right, power or remedy. If a Party waives a breach of any provision of this Agreement this shall not operate as a waiver of a subsequent breach of that provision, or as a waiver of a breach of any other provision.

21.4 The rights and remedies provided in this Agreement are cumulative and unless otherwise provided in this Agreement are not exclusive of any rights and remedies provided at law, in equity or otherwise under this Agreement.

21.5 No variation of this Agreement shall be valid unless recorded in writing and signed by or on behalf of each of the Parties to this Agreement.

21.6 If any provision of this Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain unaffected and in force. The Parties agree, in such circumstances, to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision.

21.7 This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall together constitute a single agreement.

21.8 This Agreement constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in them and supersedes any previous agreement between the Parties relating to such matters.

21.9 The relationship of Jisc to the Institution is that of independent contractor. Neither Party is agent for the other, nor does either Party have any authority to enter into any contract, whether expressly or by implication, in the name of the other Party, without that Party's prior written consent.

21.10 It is further agreed and acknowledged that Jisc does not act as the appointed representative of the Institution, and does not have any authority to appoint any other intermediary to act as appointed representative of the Institution.

22. NOTICES

22.1 A notice given under this Agreement:

- 22.1.1 shall be in writing (which may include email);
- 22.1.2 shall be sent for the attention of the person, and to the address given in this Clause 22 (in the case of Jisc) or given in the Order Form (in the case of the Institution) (unless otherwise notified by the recipient Party of an alternative person or address, such notice to take effect five (5) Business Days from the notice being received); and
- 22.1.3 shall be delivered personally; or sent by registered post; or sent by e-mail transmission to the relevant email address specified in Clause 22.2 or the Order Form (as applicable).

22.2 The address for service of notice to Jisc is:

Address: Jisc, Brettenham House (South Entrance), 5 Lancaster Place, London WC2 7EN

Email address: mark.harrington@jisc.ac.uk and must be copied by email to legal@jisc.ac.uk

For the attention of: Mark Harrington

22.3 A notice is deemed to have been received:

- 22.3.1 if delivered personally, at the time of delivery; or
- 22.3.2 in the case of registered post, forty-eight (48) hours from the date of posting; or
- 22.3.3 in the case of e-mail, at the time of transmission, provided no error message is received indicating failure to deliver and further provided that a confirmatory copy is sent by registered post or by personal delivery before the end of the next Business Day; and
- 22.3.4 if deemed receipt under the previous paragraphs of this Clause 22.3 would result in the notice being received outside of business hours (meaning 9.00 am to 5.30 pm on a Business Day), the notice will be deemed to have been received at 9.00 am on the next Business Day.

22.4 To prove service, it is sufficient to prove, in the case of email, that the notice was transmitted by e-mail to the correct e-mail address of the relevant Party and in the case of post, that the envelope containing the notice was properly addressed and posted.

23. **GOVERNING LAW AND JURISDICTION**

23.1 This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and interpreted in accordance with the laws of England.

23.2 Each Party irrevocably submits to the exclusive jurisdiction of the courts of England and Wales over any claim or matter arising under, or in connection with, this Agreement.