

Dated: 10/2024

SOFTWARE LICENCE AGREEMENT

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PARTIES

- (1) **EVALUATE IT LIMITED** incorporated and registered in England and Wales with company number 12090188 whose registered office is at 4 Merrow Chase, Guildford, Surrey GU1 2RY (EMS);

RECITALS

- (A) EvaluateIT is the entire legal and beneficial owner and licensor of certain software products listed in **Error! Reference source not found.** and is willing to license the Customer to use these products.

AGREED TERMS

1. INTERPRETATION

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

Affiliate	includes, in relation to either party, each and any subsidiary or holding company of that party and each and any subsidiary of a holding company of that party.
Business Day	a day other than a Saturday, Sunday or public holiday in England when banks in [London] are open for business.
Intellectual Property Rights	patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.
Maintenance Release	a release of the Software that corrects faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a New Version.
Mandatory Policies	Evaluate's business policies and codes as notified by Evaluate to the Customer from time to time.
New Version	any new version of the Software which from time to time is publicly marketed and offered for purchase by Evaluate in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product.

Open-Source Software	open-source software as defined by the Open-Source Initiative (http://opensource.org) or the Free Software Foundation (http://www.fsf.org).
Site	the premises from which the Customer carries out its business [as stated above or] as notified to Evaluate in writing from time to time.
Software	the computer programs listed in Error! Reference source not found.
Specification	the document(s) detailing the specification or description of the Software.
Term	the term for which the Customer is licenced to use the Software, as specified in Schedule 1.

1.2 **Holding company** and **subsidiary** mean a "holding company" and "subsidiary" as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee. In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that: (a) references in sub sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.

1.3 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.

1.4 Unless the context otherwise requires:

1.4.1 words in the singular shall include the plural and in the plural shall include the singular;

1.4.2 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.5 In the case of conflict or ambiguity between any provision contained in the body of this Licence and any provision contained in the schedules or appendices, the provision in the body of this Licence shall take precedence.

1.6 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.

1.7 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.

1.8 The Schedules form part of this Licence and shall have effect as if set out in full in the body of this Licence. Any reference to this Licence includes the Schedules and Annexes.

2. DELIVERY OF SOFTWARE

2.1 Evaluate shall provide access to the Software electronically over the internet to the Customer.

2.2 The Customer shall be deemed to have accepted the Software if it commences operational use of the Software.

3. LICENCE

3.1 In consideration of the Fee paid by the Customer to Evaluate, EMS grants to the Customer a non-exclusive licence for the Term to use the Software.

3.2 In relation to scope of use:

3.2.1 use of the Software shall be restricted to use of the Software in object code form for the purpose of processing the Customer's data (which shall not include allowing the use of the Software by, or for the benefit of, any person other than an employee or agent of the Customer).

3.2.2 the Customer may not use the Software other than as specified in clause 3.1 and clause **Error! Reference source not found.** without the prior written consent of Evaluate, and the Customer acknowledges that additional fees may be payable on any change of use approved by EMS.

3.2.3 except as expressly stated in this clause 3, the Customer has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software in whole or in part except to the extent that any reduction of the Software to human readable form (whether by reverse engineering, decompilation or disassembly) is necessary for the purposes of integrating the operation of the Software with the operation of other software or systems used by the Customer, unless EMS is prepared to carry out such action at a reasonable commercial fee or has provided the information necessary to achieve such integration within a reasonable period, and the Customer shall request EMS to carry out such action or to provide such information (and shall meet EMS's reasonable costs in providing that information) before undertaking any such reduction.

3.2.4 any third-party software shall be deemed to be incorporated within the Software for the purposes of this Licence (except where expressly provided to the contrary) and use of the third-party software shall be subject to the third-party additional terms.

3.2.5 the Customer shall indemnify and hold EMS harmless against any loss or damage which it may suffer or incur as a result of the Customer's breach of any third-party additional terms howsoever arising.

3.2.6 EMS may treat the Customer's breach of any third-party additional terms as a breach of this Licence.

3.3 The Customer may not use any such information provided by EMS or obtained by the Customer during any such reduction permitted under clause 3.2.3 to create any software whose expression is substantially similar to that of the Software nor use such information in any manner which would be restricted by any copyright subsisting in it.

3.4 The Customer shall not:

3.4.1 sub-license, assign or novate the benefit or burden of this Licence in whole or in part;

3.4.2 allow the Software to become the subject of any charge, lien or encumbrance; and

3.4.3 deal in any other manner with any or all of its rights and obligations under this agreement,

without the prior written consent of EMS.

3.5 EMS may at any time assign, novate, charge or deal in any other manner with any or all of its rights and obligations under this Licence, provided it gives written notice to the Customer.

3.6 The Customer shall:

3.6.1 ensure that the number of persons using the Software complies with any maximum number of users specified in Schedule 1;

3.6.2 notify EMS as soon as it becomes aware of any unauthorized use of the Software by any person;

3.6.3 pay, for broadening the scope of the licences granted under this Licence to cover the unauthorized use, an amount equal to the fees which EMS would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorised use on the date when such use commenced together with interest at the rate provided for in clause 5.3, from such date to the date of payment.

4. **MAINTENANCE RELEASES**

5. **EMS WILL PROVIDE THE CUSTOMER WITH ALL MAINTENANCE RELEASES GENERALLY MADE AVAILABLE TO ITS CUSTOMERS. EMS WARRANTS THAT NO MAINTENANCE RELEASE WILL ADVERSELY AFFECT THE THEN EXISTING FACILITIES OR FUNCTIONS OF THE SOFTWARE. FEES**

5.1 The Customer shall pay to EMS licence fees in accordance with Schedule 1.

5.2 All sums payable under this Licence are exclusive of VAT or any relevant local sales taxes, for which the Customer shall be responsible.

5.3 If the Customer fails to make any payment due to EMS under this agreement by the due date for payment, then, without limiting EMS's remedies under clause 12, the Customer shall pay interest on the overdue amount at the rate of 4% per annum above HSBC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

6. **CUSTOMER'S WARRANTIES**

6.1 The Customer warrants that:

6.1.1 all registration information that it submits using the Software shall be accurate and truthful;

6.1.2 it will maintain the accuracy of all such registration information;

6.1.3 it has the authority to enter into this Agreement t;

6.1.4 it has the legal authority to use and access the Software and takes full responsibility for the selection and use of and access to the Software;

6.1.5 it will only grant user accounts to individuals who are either teachers, staff members or other employees of a school, local education trust or local authority and that, in the event of any such individual leaving their employment, all such accounts will be promptly deactivated.

7. **CONFIDENTIALITY AND PUBLICITY**

7.1 Each party shall, during the term of this Licence and thereafter, keep confidential all, and shall not use for its own purposes (other than implementation of this Licence) nor without the prior

written consent of the other disclose to any third party (except its professional advisors or as may be required by any law or any legal or regulatory authority) any, information of a confidential nature (including trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party or any of its Affiliates, unless that information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of this Licence, or subsequently comes lawfully into the possession of such party from a third party. Each party shall use its reasonable endeavours to prevent the unauthorised disclosure of any such information.

7.2 EMS shall be entitled to refer to the fact that the Customer is a client of EMS and a user of the Software.

8. EXPORT AND COMPLIANCE WITH POLICIES

8.1 Neither party shall export, directly or indirectly, any technical data acquired from the other party under this agreement (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations (Export Control Laws), including United States export laws and regulations, to any country for which the government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.

8.2 Each party undertakes:

8.2.1 contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and

8.2.2 if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

8.3 In performing its obligations under this agreement the Customer shall comply with the Mandatory Policies.

9. SUPPLIER'S WARRANTIES

9.1 EMS warrants that the Software will conform in all material respects to the Specification or product description for a period of 90 days from the date of this Licence (Warranty Period). If, within the Warranty Period, the Customer notifies EMS in writing of any defect or fault in the Software in consequence of which it fails to conform in all material respects to the Specification, and such defect or fault does not result from the Customer, or anyone acting with the authority of the Customer, having amended the Software or used it outside the terms of this Licence for a purpose or in a context other than the purpose or context for which it was designed or in combination with any other software not provided by EMS, or it has not been loaded onto Supplier-specified or suitably configured equipment, EMS shall,

9.1.1 repair the Software;

9.1.2 terminate this Licence immediately by notice in writing to the Customer and refund any of the Fee paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Software to the date of termination) on return of the Software and all copies thereof,

provided the Customer provides all the information that may be necessary to assist EMS in resolving the defect or fault, including a documented example of any defect or fault, or sufficient information to enable EMS to re-create the defect or fault.

9.2 EMS does not warrant that the use of the Software will be uninterrupted or error-free.

- 9.3 The Customer accepts responsibility for the selection of the Software to achieve its intended results and acknowledges that the Software has not been developed to meet the individual requirements of the Customer.
- 9.4 The Customer acknowledges that any Open-Source Software provided by EMS is provided "as is" and expressly subject to the disclaimer in clause 9.5.
- 9.5 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this Licence or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

10. **LIMITS OF LIABILITY**

10.1 Except as expressly stated in clause 10.2:

10.1.1 EMS shall not in any circumstances have any liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:

10.1.1.1 special damage even if EMS was aware of the circumstances in which such special damage could arise;

10.1.1.2 loss of profits or revenue; or

10.1.1.3 loss of anticipated savings; or

10.1.1.4 loss of business opportunity; or

10.1.1.5 loss of goodwill; or

10.1.1.6 loss or corruption of data; or

10.1.1.7 any indirect or consequential damage.

10.1.2 the total aggregate liability of EMS to the Customer for all claims, whether in contract, tort (including negligence) or otherwise and whether in connection with this Licence or any collateral contract, shall in no circumstances exceed a sum equal to 120% of the Fee payable by the Customer in the first 12 months; and

10.1.3 the Customer agrees that, in entering into this Licence, either it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this Licence or (if it did rely on any representations, whether written or oral, not expressly set out in this Licence) that it shall have no remedy in respect of such representations and (in either case) EMS shall have no liability in any circumstances otherwise than in accordance with the express terms of this Licence.

10.2 EMS does not exclude liability for:

10.2.1 death or personal injury caused by the negligence of EMS, its officers, employees, contractors or agents;

10.2.2 fraud or fraudulent misrepresentation;

- 10.2.3 breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - 10.2.4 any other liability which may not be excluded by law.
- 10.3 All dates supplied by EMS for the delivery of the Software or the provision of Services shall be treated as approximate only. EMS shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.
- 10.4 All references to "EMS" in this clause 10 shall, for the purposes of this clause be treated as including all employees, subcontractors and suppliers of Evaluate It Ltd and its Affiliates, all of whom shall have the benefit of the exclusions and limitations of liability set out in this clause.
- 11. INTELLECTUAL PROPERTY RIGHTS**
- 11.1 The Customer acknowledges that all Intellectual Property Rights in the Software and any Maintenance Releases belong and shall belong to EMS or the relevant third-party owners (as the case may be), and the Customer shall have no rights in or to the Software other than the right to use it in accordance with the terms of this Licence.
- 11.2 EMS undertakes at its own expense to defend the Customer against any claim or action brought against the Customer alleging that the possession or use of the Software (or any part thereof) in accordance with the terms of this Licence infringes the Intellectual Property Rights of a third party (Claim) and shall be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Customer as a result of or in connection with any such Claim. For the avoidance of doubt, clause 11.2 shall not apply where the Claim in question is attributable to possession or use of the Software (or any part thereof) by the Customer other than in accordance with the terms of this Licence, use of the Software in combination with any hardware or software not supplied or specified by EMS if the infringement would have been avoided by the use of the Software not so combined, or use of a non-current release of the Software.
- 11.3 If any third party makes a Claim, or notifies an intention to make a Claim against the Customer, EMS's obligations under clause 11.2 are conditional on the Customer:
- 11.3.1 as soon as reasonably practicable, giving written notice of the Claim to EMS, specifying the nature of the Claim in reasonable detail;
 - 11.3.2 not making any admission of liability in relation to the Claim without the prior written consent of EMS; and
 - 11.3.3 giving EMS and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable EMS and its professional advisers to examine them and to take copies (at EMS's expense) for the purpose of assessing the Claim.
- 11.4 If any Claim is made, or in EMS's reasonable opinion is likely to be made, against the Customer, EMS may at its sole option and expense:
- 11.4.1 procure for the Customer the right to continue to use the Software (or any part thereof) in accordance with the terms of this Licence;
 - 11.4.2 modify the Software so that it ceases to be infringing;
 - 11.4.3 replace the Software with non-infringing software; or
 - 11.4.4 terminate this Licence immediately by notice in writing to the Customer and refund any of the Fee paid by the Customer as at the date of termination (less a reasonable

sum in respect of the Customer's use of the Software to the date of termination) on return of the Software and all copies thereof,

provided that if EMS modifies or replaces the Software, the Customer shall have the same rights in respect thereof as it would have had under those clauses had the references to the date of this Licence been references to the date on which such modification or replacement was made.

11.5 Clause 11.2 shall not apply to the extent that any claim or action referred to in that clause arises directly or indirectly through the possession or use of any Third-Party Software or through the breach of any Third-Party Additional Terms by the Customer.

11.6 This clause 11 constitutes the Customer's exclusive remedy and EMS's only liability in respect of Claims and, for the avoidance of doubt, is subject to clause 10.1.

12. **TERMINATION**

12.1 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:

12.1.1 the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;

12.1.2 the other party commits a material breach of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 28 days after being notified [in writing] to do so;

12.1.3 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;

12.1.4 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors 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;

12.1.5 the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;

12.1.6 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 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;

12.1.7 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, partnership or limited liability partnership);

12.1.8 the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;

12.1.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

12.1.10 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or

sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within [14] days;

- 12.1.11 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 clause 12.1.3 to clause 12.1.10 (inclusive);
 - 12.1.12 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 12.2 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.
- 12.3 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.
- 12.4 On termination for any reason:
- 12.4.1 all rights granted to the Customer under this Licence shall cease;
 - 12.4.2 the Customer shall cease all activities authorised by this Licence;
 - 12.4.3 the Customer shall immediately pay to EMS any sums due to EMS under this Licence; and
 - 12.4.4 the Customer shall immediately destroy or return to EMS (at EMS's option) all copies of the Software then in its possession, custody or control and, in the case of destruction, certify to EMS that it has done so.

13. **WAIVER**

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

14. **REMEDIES**

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

15. **ENTIRE AGREEMENT**

- 15.1 This Licence, the Schedules and any documents expressly referred to in this Licence contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.
- 15.2 Each party acknowledges that, in entering into this Licence and the documents referred to in it, it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to this Licence or not) (Representation) other than as expressly set out in this Licence or those documents.
- 15.3 Nothing in this clause shall limit or exclude any liability for fraud.

16. **VARIATION**

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

17. **SEVERANCE**

17.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

17.2 If any provision or part-provision of this agreement is deemed deleted under clause 17.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

18. **COUNTERPARTS**

This agreement may be executed in any number of counterparts, each of which when executed [and delivered] shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

19. **THIRD-PARTY RIGHTS**

A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement [unless that party is expressly named as a third party having rights to enforce this contract in Schedule 1], but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

20. **NO PARTNERSHIP OR AGENCY**

20.1 Nothing in this 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, or authorise any party to make or enter into any commitments for or on behalf of any other party

20.2 [Each party confirms it is acting on its own behalf and not for the benefit of any other person.]

21. **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 result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for [3] months], the party not affected may terminate this agreement by giving 7 days' written notice to the affected party.

22. **NOTICES**

22.1 Any notice given to a party under or in connection with this contract shall be in writing and shall be:

22.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

22.1.2 sent by email to the relevant email address below, as may be varied by the parties at any time by written notice to the other;

EMS's email address: [info@evaluatemyschool.co.uk]

Customer's email address: []

- 22.2 Any notice shall be deemed to have been received:
- 22.2.1 if delivered by hand, at the time the notice is left at the proper address;
 - 22.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting;
 - 22.2.3 if sent by email, at 9.00 am on the next Business Day after transmission.
- 22.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall not include e-mail.
23. **GOVERNING LAW AND JURISDICTION**
- 23.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 23.2 The parties irrevocably agree that the courts of England and Wales shall 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).