

# Service Agreement



Between

**WisePay** and  
**Example School Name**

For the supply of Services on the WisePay Platform

**Date:**

**Reference Number:**

This Agreement is made between the following parties;  
(the Customer) an organisation governed under the laws of England and Wales and having its principal premises at

**SCHOOL NAME HERE**

and

WisePay Ltd is a company incorporated under the laws of England and Wales and having its principal offices at  
2 Darker Street Leicester, Leicestershire, LE1 4SL, England

## 1. Definitions and Interpretation

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

<b>"Applications and Services"</b>	means the selected software applications and services provided by the Service Provider which shall be available to the Customer, as set out in this Agreement;
<b>"Full Administrator"</b>	means a named employee of the Customer who has Administration Access rights to all the Service(s) provided by the Service Provider, including Banking, Refund Access, Add/Edit and Reporting Access and who has money handling, reconciliation or finance duties within the Customer's organisation. This Account has full access to all reports provided by the Service Provider, can add and refund cash/cheque payments and has the ability to provide refunds to debit and credit cards if Customer allows.
<b>"Service Administrator"</b>	means a named employee of the Customer who has Administration Access rights to a Specific Service(s) provided by the Service Provider (ie rather than all Services). This includes Add/Edit and Reporting Access and who has money handling, reconciliation or finance duties within the Customer's organisation for a Specific Service. This Account has full access to all reports within the Service they are managing but no access to either Banking Reports or other Services that the Customer may choose. Service Administrators can add and refund cash/cheque payments but cannot perform refunds to debit and credit cards.
<b>"Departmental Administrator - Money Handling"</b>	means a named employee of the Customer who has the ability to Add, Edit products and who has access to Reports on the Products within a specific Service(s) they have access to. This account can add cheque and cash payments but cannot perform refunds either to cards or cash/cheque refunds. They have no access to banking reports.
<b>"Departmental Administrator - Non-Money Handling"</b>	means a named employee of the Customer who has the ability to Add, Edit products and to access Reports on the Products within a specific Service(s) they have access to. They have no money handling duties within the Customer's Organisation so cannot provide refunds (either card, cash or cheque).
<b>"Front Desk Administrator"</b>	means a named employee of the Customer who has Administrator Access rights to all Services provided by the Service Provider to add manual (cash and cheque) payments only but has no ability to Add, Edit or Delete Products and has no access to the Banking Reports or to any Refund functionality within the Service.

<b>"Generic 'View Only' Administrator"</b>	means a 'generic' account provided to the Customer by the Service Provider with no money handling or finance duties within the Customer's organisation. This account can only view specific payment reports to enable them to see who has made payment by a product.
<b>"Service Provider's Infrastructure"</b>	means the Service Provider's computer hardware, firmware, software and communications infrastructure which is used to facilitate access to the Applications by the Customer;
<b>"Business Day"</b>	means any day other than Saturday or Sunday that is not a bank or public holiday;
<b>"Business Hour"</b>	means any time between 0900 and 1700 on a Business Day, during which the Service Provider is open for business;
<b>"Confidential Information"</b>	means all business, technical, financial or other information created or exchanged between the Parties throughout the Term of this Agreement;
<b>"Customer Computer Systems"</b>	means the Customer's computer hardware, firmware, software and communications infrastructure through and on which the Applications are to be used;
<b>"Customer Data"</b>	means any data belonging to the Customer or to third parties and used by the Customer under license or by any other arrangement, which is created using the Applications or otherwise stored in the Service Provider's Infrastructure;
<b>"Fees"</b>	means the sums payable by the Customer in return for access to the Applications, the Service Provider's Services and Infrastructure, Modules and support services provided by the Service Provider in accordance with this Agreement;
<b>"Intellectual Property Rights"</b>	means all vested contingent and future intellectual property rights including but not limited to services and applications, copyright, trade marks, service marks, design rights (whether registered or unregistered), patents, know-how, trade secrets, inventions, set-up, configurations and database rights;
<b>"Modules"</b>	means the application modules specifically supplied by the Service Provider;
<b>"Non-Customer User"</b>	means a non-employee of the Customer who may not use the Service in the absence of written consent from the Service Provider;

**“Service”** means, collectively, the Applications, the Service Provider’s Infrastructure, the Service and support services provided by the Service Provider to the Customer; and

**“User”** means an employee of the Customer, parent, student or third party using the Service Provider’s Services.

**“User Account”** means the account of an employee of the Customer, parent, guardian student or third party who shall, use the Service Provider’s Service through which the online payment or online booking is facilitated.

1.2 Unless the context otherwise requires, each reference in this Agreement to:

- 1.2.1 “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
- 1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
- 1.2.3 “this Agreement” is a reference to this Agreement and each of the Schedules as amended or supplemented at the relevant time;
- 1.2.4 a Schedule is a schedule to this Agreement; and
- 1.2.5 a Clause, sub-Clause or paragraph is a reference to a Clause of this Agreement (other than the Schedules) or a paragraph of the relevant Schedule.

1.3 The headings used in this Agreement are for convenience only and shall have no effect upon the interpretation of this Agreement.

1.4 Words imparting the singular number shall include the plural and vice versa.

1.5 References to any gender shall include the other gender.

## 2. Services Provision

2.1 The Service Provider will provide to the Customer the following Services:

- A.
- B.
- C.
- D. Annual Subscription to the above Services for up to 4 staff as either Full Administrators or Service Administrators.
- E. WisePay Remote Support on the above Services for the above 4 Subscriptions (to include 30 days unlimited support from the first date the Customer or a single User Administrator of the Customer is provided access to any or all the above Services by the Service Provider then remote support requests after the 30 day period has expired).

on a non-exclusive basis for the duration of the Term agreed and in accordance with the terms and conditions set out in this Agreement. The Service(s) are hosted on the

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Service Provider's Infrastructure.

- 2.2 The Customer is able to request any additional Services from the Service Provider that may be available and provided by the Service Provider at any time during the term of this Agreement. Details of costs and for additional Services will be communicated to the Customer separately and will be provided under the same general terms as set out in this Service Agreement unless specified otherwise.

### 3. Services Configuration

The Service Provider will make available the Service(s) as detailed in this Agreement to the Customer. **This will include:**

- Setting up a User Account for each user/student providing Student has Unique ID and all information is provided in format required by the Service Provider.
- Setting up Customer's Administrator Accounts based on definitions in this document and as agreed with the Customer.
- Setting up User Accounts for Staff members to pay online providing Staff Member has Unique ID and all information is provided in format required by the Service Provider. Configuration of the Customer's Merchant ID and Internet Payment Gateway with the Service Provider's Service. (Please note these agreements are between the Customer and the third party supplier).
- Report Generation – setting up of reports on behalf of Customer for auditing and financial purposes based on the Services detailed.
- Launch – make the site available for User Accounts as appropriate.
- Launch Training as detailed in this Agreement.

### 4. Agreement Term

- 4.1 This Agreement shall be valid immediately that it is signed by the Customer and shall continue until 36 months after the date that the Service Provider provides the Customer access to the Service(s).
- 4.2 The Customer and the Service Provider may enter in to good faith negotiations to extend this Agreement at least six (6) months prior to the expiration of this Agreement. Should that agreement not be in place and the Customer continues to use the Service(s) after the 36 month period has ended, the Service Provider reserves the right to charge the Customer on the basis and terms of this agreement plus any price increases and any addendums attached to this agreement that may have been put in place during the term of this agreement until a new agreement is in place. For the avoidance of doubt unless the Customer provides to the Service Provider in writing (6 weeks prior to the end of this agreement) that they no longer wish to carry on with the Service(s) after the 36 month period has ended but continues to use the Service(s) without a new Agreement being put in place, the Customer accepts that this Agreement will run for a further 24 months with a 5% price increase and payment from the Customer to the Service Provider will be due. The Service Provider is under no obligation to continue to provide the Service(s) to the Customer after the initial 36 month period has ended.

## 5. Set Up Fee and Service Costs

The set up fee and annual subscriptions due by the Customer to the Service Provider for the Services detailed is:

### Set Up

Service A =  
Service B – C

### Annual Subscriptions and Support

Service A =  
Service B – C

Services D and E included in above

For the avoidance of any doubt, the above fees and costs do not include transaction charges or SMS text charges.

- 5.1 The set up fees and 50% of the 1st year's annual subscription will be invoiced and become due immediately in order to set up the Service.
- 5.2 The balance of first year's annual subscription charge will be invoiced once the Service Provider has provided the Customer access to the Service (usually around the Training Date agreed). This fee will be due whether or not the Customer is using the Service.
- 5.3 The annual anniversary of each Service will be the date the Service is provided to the Customer by the Service Provider (ie as in 5.2 above).
- 5.4 In the event that the Customer does not pay the Fees due within the time period, the Service Provider reserves the right to charge the Customer 3% over the Bank of England Base rate for the time period that the invoice is outstanding.
- 5.5 In the event that the Customer fails to pay the Fee or fails to pay all of the Fee due, the Service Provider reserves the right to suspend the Customer's use of the Service until the outstanding invoice has been paid by the Customer.

## 6. Administration User Accounts, Support and Annual Subscription to the Service

- 6.1 The Service Provider will provide up to a total of 4 employees of the Customer, either as 'Full Administrator' Subscriptions or 'Service Administrator' Subscriptions to the Service Provider's Services as detailed in this document. This is included in the annual cost of the Service(s) as detailed under Section 5.
- 6.2 All Full or Service Administrators who the Customer requires to be supported by the Service Provider, must attend a training session provided by the Service Provider. Any Administrator (either supported or unsupported) who does not attend a WisePay training session (or who has not been trained by the Service Provider directly (ie the Customer has chosen to 'train the trainer') cannot be supported by the Service Provider and will need to direct any support requests that they may have, through a WisePay trained and supported Administrator.

- 6.3 Should the Customer request a direct change in a 'Full', or 'Service' User at anytime from an existing user to a new user, there will be no charge.
- Should the Customer make such a request and the Customer wishes the new replacement Administration User to be supported by the Service Provider, the new user will need to complete a WisePay training. If the Customer chooses to 'train' the new Administrator User directly, then the new Administrator User will need to direct any support requests via a WisePay trained Administrator.
- 6.4 Should the Customer request that an Administration User be removed from the Service, access for that User will be removed as soon as the Service Provider is given written confirmation by the Customer. The Service Provider cannot provide any refunds on any payments that may have been made for the Administration User account.
- 6.5 For the avoidance of any doubt, an organisation must have at least one 'Full' active Administrator' who has received WisePay training to enable the Service Provider to be able to provide support to the Customer.
- 6.6 For security and tracking purposes, sharing 'named' Administrator User login details across employees is strictly prohibited under the terms of this Agreement. Should the Service Provider suspect that the Customer is doing this, the Service Provider reserves the right to restrict access rights across all Administration Users until the issue is resolved. In this event, the Customer will remain liable for all outstanding and ongoing usage and transaction charges to the Service Provider.  
For the avoidance of doubt, the Customer is responsible for the management and security of all Administration User Accounts. Any breach of security due to the Customer sharing Administrator logins is the responsibility of the Customer.
- 6.7 The Service Provider reserves the right to refuse support of the Service if the Service Provider believes that support is being requested by parties who have not received adequate training on the Service.
- 6.8
- 6.9 The Service Provider will provide the Customer off-site technical support providing the individual User Administrator requesting support has attended a training session provided by the Service Provider for the Service that they wish to be supported on. The Support Service Package is as detailed in this document.

Technical Support will be provided online and remotely using the Service Provider's email address of [support@wisePAY.co.uk](mailto:support@wisePAY.co.uk). (or otherwise as advised, should the Service Provider change this address during the lifetime of this agreement) and then by telephone, where appropriate. All Support questions or issues must be provided in writing to the Service Provider by the Customer together with the reference information needed for the Service Provider to be able to respond to any requests. To avoid 'missed calls' and 'telephone chasing' and to accommodate different working hours of different customers, if telephone call backs are required to resolve any issues, these will be at a booked time and date to be agreed by both parties.

Support is available during the business hours of 0900 – 1700 Monday to Friday with the exclusion of UK holidays.

The Service Provider will also make available User Guides and Electronic Help.

Should the Customer require additional Support, other than the Support and Service package included in this Agreement, the Customer is able to request a Support and Service Upgrade Package (price and detail available from the Service Provider).

- 6.10 The Service Provider shall be responsible for all maintenance and upgrades to the Infrastructure. Therefore, there may be occasions when the Service is unavailable to enable the Service Provider to perform such upgrades and maintenance.
- 6.11 The Customer and the Customer's User Administrators are responsible for the inputting, checking and management of all financial data in to the Service Provider's Service. For the avoidance of doubt, the Service Provider's support is for technical support and for supporting the Service that the Service Provider is providing to the Customer. The Service Provider's support does not include supporting data input, financial accounting services or resolving any inaccurate financial input by the User Administrators.
- 6.12 Financial accounting investigations (ie investigating mistakes in manual payment entries or data inputs by the Customer) and audit preparation work are not included in the Service Provider's support. All such requests must be put in writing to the Service Provider by a Full Administrator of the Customer using [support@wisepay.co.uk](mailto:support@wisepay.co.uk). The Service Provider will provide a quotation for the work. By accepting this Agreement, the Customer accepts that such additional work requests by the Customer is not covered by the Service Provider's support.
- 6.13 The Customer shall be responsible for all maintenance and upgrades to the Customer Computer Systems which may from time to time be required. This includes ensuring that the Customer Computer Systems are upgraded sufficiently and regularly in order to be able to display the Service provided by the Service Provider correctly.
- 6.14 The Service Provider will endeavor to provide the availability of the Service on a continuous basis to the Customer. However, there may be times when the Service may be unavailable through routine maintenance, corrective action or circumstances outside the control of the Service Provider. In such instances, the Service Provider cannot be held liable for any loss of revenues, anticipated revenues, charges, profits or costs that maybe incurred by the Customer.

## 7. User Accounts and User Account Maintenance

- 7.1 The Service Provider will set up Accounts on behalf of the Customer from electronic data provided by the Customer in the format requested by the Service Provider.
- 7.2 If the Customer has requested the Xporter Sync Tool Service or the WisePay Auto Student / Staff Upload Service. The set up and annual charge for either Service is detailed in Section 5 of this document. This charge is for one MIS database and one usage of the Xporter Sync Tool DMS or Auto Student Upload Service. (Please be aware that certain Services are supplied by a 3rd party company).

Should the Customer not request the Xporter Sync Tool Service, the DMT Student Sync Service or the WisePay Auto Student Upload Service (or have internal problems or delays in establishing the Service), WisePay will set up the Accounts on behalf of the Customer from electronic data provided to the Customer in the format requested by the Service Provider **without charge for one upload.**

However, if the data is not provided in the format requested by the Service Provider, or the Customer provides more than one request for the Service Provider to manually import students, the Service Provider will charge the Customer £150.00 + VAT for organising the data correctly and £150.00 + VAT for each additional template provided by the Customer.

- 7.3 Once the Service and Accounts have been configured, the Customer is responsible for updating all further Accounts using either the tools provided in the Service or by using the Xporter Sync Tool, the DMS Student Sync Service or the WisePay Student Auto Upload Service if requested as a Service.

Providing the Customer is using one of the Service Provider's Automatic Student Services, all new students, leaving students and students moving to a new year will be automatically updated. However, if the Customer is not using the Service Provider's Service, for the avoidance of any doubt, the above template option includes new year intake and student moves.

- 7.4 Should the Customer request that the Service Provider provide a 'bulk' account update at any time on behalf of the Customer (after the initial Bulk Upload or at any time during the Service, there will be a charge of £150.00 per MIS per update charged by the Service Provider to the Customer per request.
- 7.5 Should the Customer make changes to the Customer's MIS or should a 3rd party supplier to the Customer make changes to a service being provided to the Customer that requires the Service Provider to undertake additional work or change any original set ups, the Service Provider will provide the Customer a written quotation for that work for the Customer to approve.

## 8. Content Management

- 8.1 The Customer will be responsible for managing, including adding, editing and deleting, all content to the Service that they wish to make available to the Users.
- 8.2 The Service Provider will add 'opening' balances on behalf of the Customer during the set up period of the Service charge, providing all opening balances are provided in a single sheet and in the electronic format required by the Service Provider.

After the 30 days from when the Customer is provided access to the Service and the

Service has been set up, should the customer request that the Service Provider add 'opening balances,' the Service Provider will charge the Customer £95.00 + VAT for any 'opening balance' requests. Such opening balances must be provided in electronic format and on the correct template which the Service Provider will provide to the Customer.

- 8.3 The Customer is responsible for providing the correct opening balances to the Service Provider. Should the Customer provide incorrect opening balances which result in the Service Provider a) having to add the balances again or b) corrective or investigative work having to be carried out by the Service Provider due to the incorrect opening balances provided by the Customer; there will be a charge of £175.00 + VAT for this additional work.

## 9. Additional Services

- 9.1 The Service Provider will communicate to the Customer about additional Services that the Service Provider may have available or may become available in the future.
- 9.2 The Customer may request additional Services from the Service Provider as detailed under Clause 2.2 of this Agreement.
- 9.3 Additional Support and Service Package upgrades are also available should the Customer require this for the Customer's staff.

## 10. Additional Service and Subscription Fees

- 10.1 Any other Software or Services that the Service Provider may introduce, the Service Provider will provide to the Customer a written quotation. The Customer is under no obligation to purchase or subscribe to any additional Services and the Service Provider is under no obligation to provide any additional Services to the Customer.

## 11. Software Licenses and Subscriptions to Service(s)

- 11.1 The Customer shall use all Applications and Services under a non-exclusive, non-transferable license, as set out in this Service Agreement. The license permits employees of the Customer only to have access to the Application's management area of the Service(s). Where a Customer may be part of a group or cluster of similar organisation types, the software license for this Application and Service(s) does not extend to any other members of that organisation type.

For the avoidance of doubt, if an organisation is part of a local authority or is a grouped or cluster organisation or has multiple sites within a limited company, legal entity or charity, then subscription to the Service Provider's Service(s) is only being granted for the organisation named as the Customer on this Service Agreement and not for any other organisation(s).

Should the Customer extend the usage of the Service outside of this Agreement, the Customer will be breaching the software license in this Agreement and the Service Provider will immediately withdraw the Service. The Customer will become liable for all additional costs as if the Service was being supplied under a separate software license(s) for a three (3) year term.

All Applications, Infrastructure and Services provided by the Service Provider remain the property of the Service Provider at all times.

## 12. Applications and Infrastructure

- 12.1 Users' access to the Applications, Services and the Infrastructure shall be controlled by means of user name and password per person.
- 12.2 Use of the management areas of the application by non-employees of the Customer (for example, 3<sup>rd</sup> party suppliers) is not permitted under this Agreement in the absence of express written consent from the Service Provider. The Service Provider requires details of the non-employee users of the management areas before consent can be given. Additional Fees will be notified to the Customer by the Service Provider for such 3<sup>rd</sup> party usage and 3<sup>rd</sup> party support.
- 12.3 The use of the Service Provider's Services by any other organisation other than the Customer is strictly forbidden and will be in breach of the software license as set out in this Agreement.
- 12.4 The Service Provider shall monitor the Customer's use of the Application, Services and Infrastructure from time to time to ensure compliance with the terms and conditions of this Agreement.
- 12.5 The Customer is exclusively responsible for its use of the Service, including the conduct of individual Users (Users to include any authorised Non-Customer Users) and must ensure that all use is in accordance with this Agreement. The Customer shall notify the Service Provider immediately of any breaches of this Agreement by any Users or Non-Customer Users.
- 12.6 Access to the Services and Applications is only permitted through the Service Provider's Infrastructure. Under no circumstances may the Customer download, store, reproduce or redistribute the Applications or Services or any other part of the Infrastructure without first obtaining the express written permission of the Service Provider.
- 12.7 The Customer's use of the Applications, Services and Infrastructure may, from time to time, be governed by statutory or regulatory rules and requirements external to the terms and conditions of this Agreement. It shall be the Customer's exclusive responsibility to ensure that their use of the Service is in compliance with any such laws.

## 13. Customer Data

- 13.1 The Customer warrants to the Service Provider that all Account Data, Email addresses and Mobile telephone numbers for SMS texting and use in the WisePay Communication Hub Service is provided by the Customer to the Service Provider and used within the Service with the opt in consent of the relevant party or parties and within the Governance of the Data Protection Act.
- 13.2 The Customer is responsible for ensuring all email addresses and mobile numbers provided to the Service Provider either by the Customer or to the Service Provider by the Customer's end user are appropriate and correct for the purpose of use by the Customer through the Service Provider's Services.
- 13.3 Should any Customer Data belong to third parties, in such cases, the Customer warrants to the Service Provider that all such Customer Data is used with the consent of the relevant third parties. Please also refer to the Service Provider's Privacy Policy.

- 13.4 The Customer and/or the Customer's Administrator Users are responsible for all data input in to the Service. This includes user, accounting and financial data provided to the Service Provider by a third party contracted by the Customer. For the avoidance of doubt, the Service Provider is not responsible for any financial data supplied by either the Customer, the Customer's User Administrators or any 3<sup>rd</sup> party of the Customer or User Administrator. In such instances, where the Service Provider may be supplied inaccurate data or no data, the Service Provider cannot be held liable for any loss of revenues, anticipated revenues, negative publicity, charges, profits or costs that maybe incurred by the Customer or the Customer's Administrator Users.
- 13.5 The Customer agrees to indemnify the Service Provider against all inaccurate data either supplied by the Customer, the Customer User Administrators or 3<sup>rd</sup> parties contracted to the Customer or Customer Administrators that may result in any loss of revenues, or anticipated revenues or any negative publicity. In such circumstances, the Customer also agrees to swiftly publicly correct any negative publicity that the Service Provider may receive relating to such inaccurate data supplied by the Customer or the Customer's agents and employees.
- 13.6 The Customer warrants that all information that the Customer may require the Service Provider to communicate to any party through the Service Provider's Service and on behalf of the Customer, the Customer has permission for the Service Provider to communicate such information from all relevant parties to such relevant parties.
- 13.7 The Customer fully indemnifies the Service Provider harmless against all losses, claims, damages and fees incurred by the Service Provider as a breach by the Customer of the Data Protection law.

## 14. Customer Responsibilities

- 14.1 By entering into this Agreement, both parties accept that the Customer (or 3<sup>rd</sup> parties instructed by the Customer) will provide the products, goods or services being advertised, communicated or sold through the Service Providers Service(s).
- 14.2 The Service Provider is at no time responsible for the provision of the products or services being advertised, communicated or sold through the Service Provider's service(s).
- 14.3 By entering into this Contract, the Customer accepts all responsibility for the correct description and provision of goods or services being advertised, communicated or sold through the Service Provider's Service(s). All contracts, terms and conditions and policies for providing the goods and services being advertised, communicated or sold through the facilities that the Service Provider is providing to the Customer are solely between the Customer and the buyers of those goods and services.
- 14.4 By entering into this Contract, the Customer agrees to indemnify the Service Provider should an individual, company or any other legal entity of any kind pursue the Service Provider should the products or services being advertised, communicated or sold through Service Provider's Service(s) be incorrect, not be delivered, or not delivered to the satisfaction of the buyer or legal entity purchasing those goods or services provided by the Customer (or third parties acting on behalf of the Customer).

For avoidance of any doubt, should any action be taken for whatever reason against the Service Provider by any individual or legal entity for the failure to satisfactorily deliver the goods or services advertised, communicated or sold through the Service Provider's Infrastructure, the Customer would compensate the Service Provider and pay for all costs and expenses that the Service Provider incurred due to such action.

- 14.5 By entering into this Agreement, the Customer also agrees to indemnify the Service Provider for any other claims including, but not limited to, any health and safety claims by any individual or legal entity that may arise from the provision of the goods or services being provided by the Customer or their third parties providing the goods or services on behalf of the Customer advertised, communicated or sold through the Service Provider's Infrastructure.

Again, for avoidance of any doubt, if action was taken for whatever reason against the Service Provider by any individual or legal entity on health and safety issues or on any other grounds due to the goods or services advertised, communicated and sold through the Service Provider's facilities on behalf of the Customer, the Customer would compensate the Service provider and pay for all costs and expenses that the Service Provider incurred due to such action.

- 14.6 The Customer agrees not to use any Services provided to the Customer by the Service Provider to send or to publish any information considered to be of a defamatory, pornographic or of an offensive nature and fully indemnifies the Service provider should the Customer perform such an action either intentionally or in error.
- 14.7 In an event as detailed in 14.6, the Service Provider reserves the right to withdraw or suspend all Services from the Customer immediately. The Customer shall remain liable for all fees as laid out in this Agreement payable to the Service Provider as if the Service(s) had not be withdrawn or suspended.
- 14.8 The Customer and its employees will fully indemnify the Service Provider against all costs, expenses, liabilities, losses, damages and judgments that the Service Provider may incur or be subject to as a result of any of the following:
- The Customer's misuse of the Applications, Infrastructure or any other element of the Service;
  - The Customer's or Customer's employees deliberately adding content designed to be malicious to the Service Provider's Service;
  - The Customer's breach of this Agreement;
- The Customer's negligence or other act of default or Inaccurate data supplied by the Customer or 3<sup>rd</sup> parties of the Customer or 3<sup>rd</sup> party relationships that the Customer has which affect the ability of the Service Provider to provide the Service Provider's Service accurately and may result in negative publicity, brand damage and business loss of the Service Provider.

## 15. Launch Training

- 15.1 The Service Provider will provide launch training of up to 3 hours, (in the same session).

## 16. Additional Training

- 16.1 If the Customer has requested more than one Service from the Service Provider, it may not be possible to carry out all training thoroughly on all Services as part of the launch training or in one day. Therefore, if required by the Customer, the Service Provider will provide additional training to the Customer at the quoted prices at the time of the request.
- 16.2 If a Customer wishes to cancel or change a booked training session, the customer is able to do so up to 5 working days before the date of the training session in writing to the Service Provider without charge. The Service Provider cannot guarantee the availability of a further specific training date if the Customer wishes to change the original date and the Service Provider will try to accommodate.

For other cancellations of the original booked training the following cancellation charges apply:

- 4 working days before the training date 25% of the training fee will be charged.
- 3 working days before the training date 50% of the training fee will be charged.
- 2 working days before the training date 75% of the training fee will be charged.
- 1 working day before the training date 100% of the training fee will be charged.

On day of booked training, if Customer is not available, cannot access, cannot be contacted or cancels the training, 100% of the training fee will be charged.

## 17. Merchant Payment Processing

- 17.1 By accepting this Service Agreement, the Customer agrees that the Service Provider will set up the merchant payment processing service on behalf of the Customer with the merchant payment processing company of the Service Provider's choice. The merchant payment processing is usually undertaken by a third party, however, the Service Provider reserves the right to change this provider without prior written notice to the Customer should the Service Provider deem this to be necessary. A list of all our merchant payment processing companies along with all our sub-processors can be found on our website <https://www.wisepay-software.com/>. If the Customer has a reasonable objection to any new or replacement sub-processor, it shall notify the Service Provider of such objections in writing within ten (10) days of the notification and the parties will seek to resolve the matter in good faith.

The Customer confirms to the Service Provider that they accept the terms and conditions of the merchant payment processing provider. Revisions to these terms and any new merchant payment processing company may take place from time to time and the Customer accepts that it is their responsibility to be aware of all such terms of these parties.

- 17.2 By accepting the merchant payment processing company's terms and conditions, the Customer also accepts that merchant payment processing company (and any new company providing a similar service on behalf of the Customer) is a separate company to the Service Provider. The Service Provider cannot be held liable for any part of the terms and conditions that the merchant payment provider (or any new merchant payment provider) may or may not fulfill on behalf of the Customer or any issues that may arise due directly with the processing service provided by the merchant payment provider (or any new merchant payment processing company) to the Customer.
- 17.3 The merchant payment processing charges that the Service Provider will charge directly to the Customer is p per transaction. This is in addition to the Merchant transaction charges which

will be charged directly to the Customer by the Merchant. The Service Provider reserves the right to pass on all charges the Service Provider incurs on behalf of the Customer which includes any processing charge increases that may be introduced during the term of this agreement. The Service Provider will notify the Customer in advance of any increases that the payment processing provider introduces.

- 17.4 The Service Provider will invoice the Customer on a monthly or quarterly basis for charges to be payable by the Customer to the Service Provider for the total number of transactions made by all users in the previous month or quarter and for any related charges that may be incurred. The terms of the invoice will be 7 days from date of invoice.
- 17.5 In the event that the Customer does not pay the charges within the time period, the Service Provider reserves the right to charge the Customer 3% over the Bank of England Base rate for the outstanding period or remove the Service to the Customer whilst the charges remain outstanding.
- 17.6 In the event that the Customer does not pay the charges in a timely manner the Service Provider reserves the right to suspend the Service to the Customer until all outstanding invoices are up to date.
- 17.7 Should the Customer not be available to pay an invoice due to the Customer's organisation being closed for a period of time (for example, through a holiday), the Service Provider reserves the right to invoice the Customer for one month's Service in advance based on previous average. The terms of that invoice will be 7 days so that it is paid before the Customer's organisation closes.

Any difference in the estimated number of transactions and the real transactions will be adjusted in the next invoice to the Customer.

## 18. WisePay Communication Hub Services

If the Customer has requested the Service Provider's SMS texting and/or emailing Services the Customer also acknowledges and agrees to the following:

### Customer Warranties

- a. The Customer shall be solely responsible for the content of any SMS text or email message that the Service Provider transmits or processes on the Customer's behalf or on behalf of any third party associated or contracted to the Customer.
- b. The Customer agrees not to use any Services provided to the Customer by the Service Provider to send or to publish any information considered to be of a defamatory, pornographic or of an offensive nature, an incitement to violence or to racial discrimination and fully indemnifies the Service Provider should the Customer perform such an action either intentionally or in error.
- c. Additionally, the Customer shall ensure that access to the Service Provider's Services shall not be used to worry or annoy any mobile phone or email user, or will have a detrimental effect to the goodwill and good standing of the Service Provider or any of the relevant network operators, or will the Service be used for any other unlawful purpose.
- d. SMS texting and emailing messages with an advertising content may not be sent to any mobile phone or email address of users who have indicated that they do not wish to receive advertising materials. The Customer agrees to ensure that all Regulations

including without limitation those of the Mobile Marketing Association (available at [www.mmaglobal.com](http://www.mmaglobal.com)) and the Independent Committee for the Supervision of Standards of Telephone Information Services (available at [icstis.org.uk](http://icstis.org.uk)).

- e. The Customer agrees to indemnify the Service Provider, its subsidiaries, affiliates, partners and employees from any claim or demand, including reasonable legal fees made by any third party due to or arising out of Content or links to Content the Customer transmits through the Service, the Customer's use of the Service, the Customer's connection to the Service or the Customer's violation of the terms of this and the associated agreement. This includes any claim by a third party due to any content or links sent by the Customer that infringes the patent, copyright, design right, trade mark or other intellectual property rights.

In an event as detailed above, the Service Provider reserves the right to withdraw or suspend all Services from the Customer immediately. The Customer shall remain liable for all fees as laid out in this Agreement payable to the Service Provider as if the Service(s) had not be withdrawn or suspended.

#### **Data Protection**

- f. The Customer acknowledges that SMS messages and email content is transmitted unencrypted and that access by unauthorised third parties to mobile phone communications and emailing communications, including SMS delivery is possible.

#### **Transmission of Text and Email Messages**

- g. The Customer acknowledges that the Service provider delivers SMS messages and emails via major telecommunications companies, networks and mobile network providers. Therefore, these providers can influence the delivery with respect of the transmission within the technical constraints imposed by the above mentioned providers.
- h. SMS messages submitted via the Service Provider's Services will be transferred to the addressed mobile or email recipient within seconds or minutes, provided that the recipient's phone/computer is switched on and located in an area covered by the users subscribed mobile or email network provider. The Customer acknowledges that, depending on the recipient's mobile or email service provider it may not be
- i. possible to transmit the SMS message or the email to the recipient successfully, particularly if the provider does not support SMS delivery at all.

#### **Text Charges**

- j. All charges and minimum SMS costs exclude VAT. The Service Provider requires all SMS texting to be paid for in advance. Unused message credits expire on the expiry date of this Agreement and will be detailed on the Customer's annual invoice.
- k. The Service Provider cannot guarantee delivery of the SMS messages to recipients due to possible errors and outages on the part of mobile and network providers or incorrect data provided by the Customer or the Customer's Users. Therefore, the Service Provider cannot refund undeliverable SMS messages to the Customer.
- l. Additionally, upon termination the Service Provider does not refund any unused SMS messages to the Customer. For the avoidance of doubt, undeliverable messages are charged at the same rate as delivered messages.
- m. All charges for the Services shall be calculated by reference to the Service Provider's data. The unique reference retained by the Service Provider for Billable Events shall, in the event of any dispute, serve as proof of the occurrence of such Billable Event.
- n. The Customer is responsible for ensuring that the Customer has purchased enough SMS texting credits in advance for the Customer's requirements as SMS texting credits cannot be provided without receipt of payment

## 19. Contract Termination

- 19.1 Either party may immediately terminate this Contract if: (i) the other party commits a breach of the provisions of this Contract and fails to remedy such breach within four (4) weeks after written notice of the existence of such breach, or (ii) the other party commits a material breach of the provisions of this Contract, or (iii) the other party should go into liquidation.

Any such termination shall be without liability for the act of termination.

- 19.2 If during the term of the Agreement the Customer acquires a new legal entity, this Agreement will terminate on the nearest Business Day prior to the actual legal date on which the Customer will convert to its new legal. Termination in accordance with Clause 19.2 shall be without liability to the Customer or Service Provider.

In the event of the Agreement terminating in accordance with Clause 19.2, the term remaining at the date of termination will form the basis of a new Agreement with the new legal entity to which the Customer has converted. For the avoidance of doubt this means that if the Agreement is for a term of 36 months and the Customer acquires a new legal entity in month 18 of the Agreement, the remaining term, respectively 18 months, will form the basis of a new Agreement with the new legal entity to which the Customer has converted.

## 20. Account Suspension

- 20.1 The Service Provider reserves the right to suspend, with immediate effect, either temporarily or permanently, any User Account, (including Student, Parent, Community, Staff or External Accounts) at anytime if there appears to be, in the opinion of the Service Provider, suspicious activities taking place on the Account.
- 20.2 The Service Provider will provide to the Customer all reasons why a User Account may have been suspended.
- 20.3 If the Customer has a suspicion, in the Customer's opinion, that a User Account is being abused, the Customer should immediately notify the Service Provider giving written instruction, that they wish the Service Provider to suspend a User Account. This suspension will remain in place until further notice is given by the Customer to the Service Provider.

## 21. Intellectual Property Ownership and Use – Part 1

- 21.1 By entering in to this Contract, the Customer agrees that it has full ownership and copyright clearance to use all materials included, but not limited to, images, text, photographs, descriptions and video supplied to the Service Provider and for the Customer, or the Service Provider on behalf of the Customer, to publish them on the Service.
- 21.2 The Customer indemnifies the Service Provider against any third party claim that may be made against the Service Provider if the Customer infringes any such copyright or Intellectual Property Rights claim or similar of a third party.

For the avoidance of any doubt, should any action be taken for whatever reason against the Service Provider by any individual or legal entity for the failure of the Customer to secure copyright or intellectual Property Right agreements on materials published or provided to be published on the Service Providers the Customer would compensate the Service Provider and pay for all costs and expenses that the Service Provider incurred due to such action.

## 22. Intellectual Property Ownership and Use – Part 2

- 22.1 All Intellectual Property Rights including software rights, design, branding and logo and any supporting documentation rights belong to the Service Provider at all times.
- 22.2 The Customer shall not either during the term or after the expiry of this Agreement permit or cause to occur any infringement of any Intellectual Property Rights. Use by the Customer and its employees of the Service shall be only within the terms of this Agreement.
- 22.3 The Customer shall not, in the absence of the Service Provider's written consent, reproduce, adapt, translate, reverse-engineer, or make available to any third party any of the Applications, any part of the Infrastructure, or any other material associated with this Agreement where such activity goes beyond the scope of actions permitted by the terms and conditions of this Agreement.
- 22.4 Where the Customer either suspects or is aware of any breach of Intellectual Property Rights covered by this Agreement it shall be under a duty to inform the Service Provider of such breach immediately.
- 22.5 The Service Provider grants the Customer a non-exclusive, royalty free licence to display the Service Provider's logo on materials and support communications providing such logo usage follows the Service Provider's Logo Usage Guide.

## 23. Changes to this Agreement

- 23.1 Any changes to this Contract can only be agreed to by the parties of this Contract and shall only be valid if they are in writing.

## 24. Exclusivity

- 24.1 The Customer agrees to the Exclusivity of the Services provided by the Service Provider as detailed in this Agreement for the term of the Agreement.

## 25. Notices

- 25.1 All notices under this Agreement shall be in writing.
- 25.2 Notices shall be deemed to have been duly given:
  - when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
  - when sent, if transmitted by fax or e-mail and a successful transmission report or return receipt is generated.

## 26. Relationship of Parties

Nothing in this Agreement shall create, or be deemed to create, a partnership, the relationship of principal and agent, or of employer and employee between the Service Provider and the Customer.

## 27. Assignment

The Customer shall not assign, transfer, sub-contract, or in any other manner make over to any third party the benefit and/or burden of this Agreement without the prior written consent of the Service Provider, such consent not to be unreasonably withheld.

## 28. Entire Agreement

28.1 This Agreement embodies and sets forth the entire agreement and understanding between the Parties and supersedes all prior oral or written agreements, understandings or arrangements relating to the subject matter of this Agreement. Neither Party shall be entitled to rely on any agreement, understanding or arrangement not expressly set forth in this Agreement, save for any representation made fraudulently.

Unless otherwise expressly provided elsewhere in this Agreement, this Agreement may be varied only by a document signed by both of the Parties.

## 29. No Waiver

29.1 The Parties agree that no failure by either Party to enforce the performance of any provision in this Agreement shall constitute a waiver of the right to subsequently enforce that provision or any other provision of this Agreement. Such failure shall not be deemed to be a waiver of any preceding or subsequent breach and shall not constitute a continuing waiver.

## 30. Dispute Resolution (Arbitration)

- 30.1 It is agreed that where any dispute or difference relating to this Agreement arises between the Parties that matter shall be referred to the arbitration of a single arbitrator with appropriate qualifications and practical experience to resolve the particular dispute.
- 30.2 The arbitrator shall be agreed by the Parties or in the event of failure to agree shall be appointed by the President for the time being of the Law Society of England and Wales.
- 30.3 The arbitration shall take place in London and shall be in accordance with the Arbitration Act 1996 or any re-enactment or modification of that Act for the time being in force.
- 30.4 The Parties shall promptly furnish to the arbitrator all information reasonably requested by him relating to the particular dispute, imposing appropriate obligations of confidence.
- 30.5 The Parties shall require the arbitrator to use all reasonable endeavours to render his decision within 30 days following his receipt of the information requested or if this is not possible as soon thereafter as may reasonably be practicable. The Parties shall co-operate fully with the arbitrator to achieve this objective.
- 30.6 The Parties shall share the fees and expenses of the arbitrator equally. The decision of the arbitrator shall be final and binding upon both Parties.

## 31. Law and Jurisdiction

31. Any dispute between the Parties relating to this Agreement shall fall within the jurisdiction of the courts of England and Wales.

## 32. Force Majeure

- 32.1 A Force Majeure occurrence shall mean any occurrence which (i) hinders, delays or prevents either the Customer or the Service Provider in performing any of its obligations, and (ii) is beyond the control of, and without the fault or negligence of, either party, and (iii) by the exercise of reasonable diligence either party is unable to prevent or provide against.
- 32.2 In the event of a Force Majeure occurrence, the party whose performance of any of its obligations is affected shall notify the other party as soon as is reasonably practicable giving the full relevant particulars and shall use its reasonable efforts to remedy the situation immediately.
- 32.3 Except for any obligation to make payments, neither party shall be responsible for any failure to fulfill any of its obligations under this Contract to the extent that fulfillment has been hindered or delayed or prevented by a Force Majeure occurrence which has been notified in accordance with this Clause.

## WisePay Service Agreement

### Document Reference No: A \_ Issue 01

The named organisation agrees to the terms set out in this Agreement and I confirm that I have the authority to sign on behalf of this organisation.

### Signed

Signed on behalf of <b>Customer</b>	Signed on behalf of <b>Service Provider</b>
<input type="text"/>	<input type="text"/>
Please print full name	Please print full name
<input type="text"/>	<input type="text"/>
Position	Position
<input type="text"/>	<input type="text"/>
Date	Date
<input type="text"/>	<input type="text"/>