



# Terms and Conditions

HummingbirdCRM Ltd

## 1 Definitions and Interpretation

The terms and conditions in this context have the following meanings

Term	Description
Applications	Means the commercial software products being provided to Licensee under this agreement and applicable quote, including in all cases as well as related documentation and computer readable media.
Authorised Users	Customer and employees and independent contractors of the Customer as well as any person(s) who may lawfully access the Software of the Customer;
Hummingbird CRM Ltd or Hummingbird	HummingbirdCRM Ltd whose Registered Address is Arden House, Shepley Lane, Marple, Stockport, SK6 6JE. E: <a href="mailto:hello@hummingbirdCRM.com">hello@hummingbirdCRM.com</a> - W: <a href="http://www.hummingbirdcrm.com">www.hummingbirdcrm.com</a>
Commencement Date	The date on which HummingbirdCRM commences provision of the Services;
Contract	These terms and conditions in conjunction with either the Quotation or the Order Form
Customer	The organisation named in the Quotation or Order Form;
Customer Personal Data	Any personal data which is transmitted by or on behalf of Customer to, or is otherwise processed by HummingbirdCRM under the Contract or which is generated under the Contract
Data Protection Legislation	The Data Protection Act 1998, from the 25 <sup>th</sup> of May 2018, the General Data Protection Regulation (EU 2016/679) or any replacement legislation applicable in England and Wales from time to time and any other applicable laws relating to the processing of personal data.
Documentation	The documentation provided with the Software and the Hosting Service;
Effective Date	Means the date on which the Contract is entered into by the parties;
Fees	The fees in respect of the Hosting Services, the Software Support Services and the Support Services (all as outlined in the Quotation or Order Form)
Hosting Service	The service whereby the Software and its associated data is hosted on a computer system under the control of HummingbirdCRM for use by the Authorised Users;
Information	any and all know-how, documentation and information, whether commercial, financial, technical, operational or otherwise relating to the business, affairs, customers, suppliers or methods of one party and disclosed to or otherwise obtained by the other party in connection with the Contract;
Initial Term	the initial period of the Contract, as specified on the Quotation or Order Form which, commences on the Commencement Date;
Intellectual Property or IP	any and all intellectual property rights including patents, trademarks, design rights, copyright, rights in databases, domain names, topography rights, know-how, look and feel, rights in confidential information and all similar rights (whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world) together with any and all goodwill relating or attached thereto, the right to apply for registration of and/or register such rights and all extensions and renewals thereof;
Licensee	Means the identity identified in the Order Form
Licensee Data	Means any information or data that Licensee collects on individual Authorised Users, including, without limitation personal information (e.g. an Authorised User's name, age, gender, race, and other directory information);
Modifications	Any modifications to the Software which remedy defects in the Software including temporary fixes, bug fixes, patches and maintenance releases and/or all modified versions of the Software which provide additional and/or enhanced functionality;
Order Form	The form, fully completed by the Customer and submitted to HummingbirdCRM requesting the supply of Software and Services, subject to these terms and conditions;
Quotation or Quote	The quotation issued to the Customer by HummingbirdCRM for the supply of Software and Services, which shall include but not limited to, pricing and any additional terms and conditions;
Services	The Hosting Service, the Software Support Services and the Support Services;
Software	The software named in the Quotation or Order Form;

Software support services	The services relating to the support and maintenance of the Software described in clause 5; and
Support services	The other services provided by HummingbirdCRM as described in clause 5.

- 1.1 Any reference to a clause, schedule or appendix shall (unless expressly provided otherwise) be a reference to a clause of or schedule or appendix to these terms and conditions. Schedules and appendices shall have the same force and effect as if set out in the body of these terms and conditions.
- 1.2 Any reference to the singular shall include the plural and vice versa and any reference to one gender shall include all genders including the neuter gender.
- 1.3 Any reference to a person shall, unless the context otherwise requires, include individuals, partnerships, companies and all other legal persons.
- 1.4 The words "include", "includes", "including" and "included" will be construed without limitation unless inconsistent with the context.
- 1.5 Reference to a sum being variable shall be to that sum as increased on each anniversary of the Commencement Date to reflect HummingbirdCRM's standard charges for the relevant matter.

## 2 Contract and term

- 2.1 These terms and conditions, together with an accepted (a) Quotation or (b) Order Form, shall form the Contract between the parties.
- 2.2 The Effective Date shall be either of the following:-
  - (a) **Quotation.** In signing and returning the Quotation to HummingbirdCRM by post or confirming acceptance of the Quotation, by electronic means, including but not limited to, signature, online or by email, the Customer accepts the Contract on the terms and conditions set out in this document and in the Quotation.
  - (b) **Order form.** The Effective Date shall be the date upon which HummingbirdCRM first receives written acceptance from the Customer.

In completing and submitting the Order Form to HummingbirdCRM by post or by electronic means, including but not limited to, signature, by email or online, the Customer accepts that any resulting Contract shall be on the terms and conditions set out in this document and in the Order Form accepted by HummingbirdCRM.

The Effective Date shall be the date upon which HummingbirdCRM confirms acceptance of the Order Form to the Customer by electronic means, including but not limited to, signature, by email or online. For the avoidance of doubt HummingbirdCRM shall be under no obligation to accept an Order Form submitted by a Customer.
- 2.3 In the event that the Customer issues a purchase order in conjunction with clause 2.2, its sole purpose shall be to facilitate the payment of HummingbirdCRM in accordance with the Quotation or Order Form and these terms and conditions. Therefore, any contradictions detailed within the purchase order (including any back of purchase order terms and conditions) when compared with the Quotation or Order Form and these terms and conditions, shall not apply.
- 2.4 The Contract shall commence on the Commencement Date and shall continue in force for the Initial Term, unless or until it is terminated in accordance with Clauses 2 or 13.
- 2.5 In the event that the Customer wishes to cancel any ordered Support Services, following the Commencement Date, , then it may do so without charge, providing it serves HummingbirdCRM with written notice of cancellation, with not less than three months' notice prior to the start date and/or specific individual dates for the provision of the Support Services it wishes to cancel, as agreed with the Customer in accordance with Clause 5.7. However, if timely notice isn't provided by the Customer to HummingbirdCRM, or the Customer has failed to agree delivery dates with HummingbirdCRM in accordance with Clause 5.7 for those Support Services it wishes to cancel, then the Customer agrees to pay HummingbirdCRM one hundred percent (100%) of the associated Support Services Fees.
- 2.6 At the end of the Initial Term and each Extended Term thereafter, the Contract will automatically be renewed for an additional one (1) year term ("Extended Term") unless or until:
  - (a) it is terminated in accordance with clause 13;
  - (b) the maximum number of Extended Term periods ("Maximum Extended Term"), as may be agreed and specified in the Quotation or Order Form, has ended, or;
  - (c) not less than three months' written notice is served by the Customer, such notice to expire on any anniversary of the Commencement Date.

- 2.7 Should HummingbirdCRM wish to terminate the Contract for whatever reason during the Initial Term or Extended Term, it shall serve notice of termination, with not less than three months' notice, such notice to expire on any anniversary of the Commencement Date.

### 3 Licence

- 3.1 HummingbirdCRM hereby grants to Customer a non-exclusive, non-transferable licence to access and use the Software through the Hosting Service and to access and use the Documentation in each case only in respect of Customer's usual business or, if Customer is a school, educational purposes.
- 3.2 The licence is non-assignable and non-transferable and Customer may not loan, rent, lease, sub-licence, sell or otherwise transfer the right to use the Software to any third party or use the same to provide bureau or other services to third parties. Notwithstanding the aforesaid and clause 14, if Customer is a school and it is restructured or merged with another school then, provided that Customer obtains HummingbirdCRM's prior written consent (which will not be unreasonably withheld or delayed) Customer may transfer the licence and this Contract to the restructured/merged school.
- 3.3 The licence entitles Customer to make such copies of the Documentation as necessary to enable Customer to exercise its rights under the licence. Customer shall ensure that all copyright and proprietary notices contained on the original version of the Software and Documentation appear on all copies made.
- 3.4 Save as permitted by law Customer may not merge, decompile, disassemble, reverse engineer, copy, adapt or modify the Software or ascertain or list the source code of the Software or copy the Documentation.
- 3.5 HummingbirdCRM may audit the use of the Software and the Hosting Service by each Authorised User no more than once in each quarter provided that HummingbirdCRM shall exercise such right with reasonable prior notice and in a manner that does not substantially interfere with Customer's normal conduct of business. If such audit reveals use of the Software or the Hosting Service by persons other than the Authorised Users, Customer shall promptly disable such persons' access and shall not issue any new passwords to such individuals and (without prejudice to its other rights and remedies) HummingbirdCRM shall have the right to charge Customer for such person's use of the Software and/or the Hosting Service as if they were additional Authorised Users.
- 3.6 All right, title and interest (including all Intellectual Property) in and to the Software shall be the exclusive property of HummingbirdCRM and other than as expressly stated herein, the Contract does not grant Customer any rights in or to the Software.
- 3.7 The Customer shall only use the data provided by HummingbirdCRM for use within the platform and shall not make use of commercially r resell the data under any circumstances. Data can be exported for the reasons of marketing etc. in other applications and for analysis purposes

### 4 Software Hosting

- 4.1 HummingbirdCRM shall perform the Hosting Services and shall use reasonable endeavours to ensure the Software is available to the Customer for use in accordance with this agreement. HummingbirdCRM shall promptly inform the Customer of any security breaches with respect to the Hosted Service.
- 4.2 Customer's access to the Hosting Service shall be limited to the number of Authorised Users as detailed in the Quotation or Order From. Customer shall use all reasonable endeavours to prevent unauthorised access to the Hosting Service and shall notify HummingbirdCRM promptly if it becomes aware of any such unauthorised access or use.
- 4.3 Customer shall ensure that each Authorised User keeps a secure password for his use of the Software, and that each Authorised User keeps his password confidential.
- 4.4 Customer acknowledges that from time to time it may be necessary or desirable to take the Software out of service for repair or maintenance and HummingbirdCRM will use reasonable endeavours to inform Customer of any such outage at least one week in advance, save that in emergency situations, when the Software needs to be taken out of service for immediate repair, Customer recognises and accepts that such advance notice may not be possible. HummingbirdCRM will however attempt to notify Customer at the earliest possible time in the event of an emergency outage.
- 4.5 HummingbirdCRM does not warrant specific uptime or network response times on any network, however HummingbirdCRM agrees that it will use reasonable endeavours to actively monitor network performance and make or recommend alterations to improve such performance as it becomes necessary.
- 4.6 HummingbirdCRM or its hosting provider will save backups of the Software and the data used by the Software.
- 4.7 Customer shall not use the Hosting Services to transmit, distribute, disseminate, publish or store any material or information that:
- (a) is illegal, spam in nature, defamatory, obscene, indecent or harassing; or threatening or encouraging bodily harm, destruction of property, or infringing the lawful rights of any party;
  - (b) violates the privacy of any party as protected by applicable law (whether local, national or international) or regulation; or

- (c) contains software viruses, worms, trojan horses or any computer code, files or programs designed to disrupt, destroy, invade, gain unauthorised access to, corrupt or modify the data, hosted applications, or any other equipment.

## 5 Support & Modification

- 5.1 HummingbirdCRM shall provide the Software Support Services comprising:
  - (a) access to an online help channel / support portal in respect of the Software; and
  - (b) Email support via support@hummingbirdcrm.com
- 5.2 HummingbirdCRM shall only be obliged to provide the Software Support Services between 8.30am and 4.30pm BST/GMT Monday to Friday excluding English public holidays and the last 2 weeks of December.
- 5.3 HummingbirdCRM shall be entitled to implement Modifications to the Software without the prior consent of Customer provided that such Modifications do not alter the basic functionality of the Software prior to such Modifications.
- 5.4 HummingbirdCRM will only be obliged to provide Software Support Services in respect of the current version of the Software
- 5.5 Any Support Services which are to be provided by HummingbirdCRM to Customer, together with the applicable Support Services fees, shall be specified in the Quotation or Order Form. Such Support Services may include, but not be limited to, the provision of training.
- 5.6 Where the Customer has ordered any Support Services, the Customer shall agree the delivery dates for such Support Services with HummingbirdCRM no later than ninety (90) days from the Commencement Date. Customer may request to re-arrange the delivery dates for such Support Services on no less than one (1) months' notice. Any revisions to the delivery dates shall be subject to HummingbirdCRM' agreement, which shall be final.

## 6 Fees

- 6.1 Customer shall pay the amount of Fees as detailed within the Quotation or Order Form.
- 6.2 Subject to Clause 2, payment of the Fees shall be as follows:-
  - (a) for the Initial Term, the first instalment of the Hosting Services and Software Support Services Fees shall be payable on the Effective Date of the Contract;
  - (b) the remaining Initial Term and ongoing Extended Term instalments for the Hosting Services and Software Support Services Fees shall be payable on each anniversary of the Commencement Date
  - (c) the Support Services Fees shall be payable upon completion of the Support Services delivered each month if any.
- 6.3 In the event that the Customer serves notice to cease use of the Hosting Services and Software Support Services in accordance with Clause 2.5, then payment of the relevant early termination charges calculated in accordance with Clause 2.6, shall be payable upon HummingbirdCRM's receipt of the Customer's written termination notice.
- 6.4 In the event that the Customer serves notice to cancel any Support Services in accordance with Clause 2.7, then payment of any termination charges shall be payable upon HummingbirdCRM's receipt of the Customer's written termination notice.
- 6.5 HummingbirdCRM shall invoice the Customer as follows:-
  - (a) For Fees attributable to Clause 6.2(a), on or following the Effective Date
  - (b) For Fees attributable to Clause 6.2 (b) in advance of each anniversary of the Commencement Date
  - (c) For Fees attributable to Clauses 6.2 (c) and (d) at the end of each month in which they were incurred
- 6.6 Customer shall pay HummingbirdCRM' within thirty (30) days of the date of each invoice.

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HummingbirdCRM Limited  
Account Number – 41988068  
Sort Code – 77-32--02
- 6.7 Customer shall reimburse HummingbirdCRM for all reasonable out of pocket travelling, accommodation and other expenses incurred by HummingbirdCRM in the provision of the Services (or the relevant part thereof).

- 6.8 Fees and (where applicable) expenses payable are expressed exclusive of all taxes, charges, duties and levies (such as but not limited to value added tax) which Customer shall pay in addition to the Fees and (where applicable) expenses at the rate and in the manner prescribed by law from time to time.

## 7 Warranties

- 7.1 HummingbirdCRM warrants that:
- (a) it has full capacity and authority and all necessary consents to enter into and to perform its obligations under the Contract;
  - (b) use of the Software and Documentation strictly in accordance with the Contract will not infringe the Intellectual Property or other rights of any third party;
  - (c) it shall provide the Services with reasonable skill and care; and
- 7.2 If Customer notifies HummingbirdCRM in writing of a failure to comply with the warranty in clause 7.1(b) HummingbirdCRM may, in its sole discretion:
- (a) procure the right for all Authorised Users to continue to use the Software and Documentation in question; or
  - (b) replace, vary or modify the Software and/or Documentation in question so that they conform to the warranty in clause 7.1(b); or
  - (c) terminate the Contract and refund any Fees paid by Customer that became due and were paid during the year in which HummingbirdCRM gave notice to Customer under this clause 7.2.
- 7.3 If Customer notifies HummingbirdCRM in writing of a failure to comply with the warranty in clause 7.1(d), HummingbirdCRM sole liability and obligation in relation to any breach of this warranty shall (at its option) be to use its reasonable endeavours to remedy any material defect in the Software or refund the first instalment of the Fee.
- 7.4 Customer warrants that it has full capacity and authority and all necessary consents to enter into and perform its obligations under the Contract .
- 7.5 All warranties, representations, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

## 8 Liability

- 8.1 Subject to clauses 8.3 and 8.4, HummingbirdCRM's total aggregate liability to Customer in respect of all causes of action arising out of or in connection with this agreement (whether in contract, strict liability, tort, delictual liability (including negligence), misrepresentation or otherwise) shall not exceed, in the case of loss or damage to tangible property, £50,000 and in any other case the greater of £1,000 and the Fees paid by Customer to HummingbirdCRM in relation to the Contract over the preceding twelve (12) months.
- 8.2 Save as provided in clauses 8.3 and 8.4, HummingbirdCRM shall not be liable to Customer for any loss of profit, loss of revenue, loss of or depletion of goodwill, loss of anticipated savings, loss of business opportunity, loss of data or loss of use of data, injury to reputation or any indirect, consequential or special loss or damage, regardless of the form of action, whether in contract, strict liability, tort or delictual liability (including negligence) and regardless of whether either party knew or had reason to know of the possibility of the loss, damage or injury in question.
- 8.3 Nothing in the Contract shall limit or exclude either party's liability:
- (a) for death or personal injury resulting from negligence;
  - (b) for fraud or fraudulent misrepresentation;
  - (c) for any other liability the exclusion or limitation of which is not permitted by English law.
- 8.4 Customer shall assume sole responsibility for the use of the Software and Services by all Authorised Users and HummingbirdCRM shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to HummingbirdCRM by Customer in connection with the Software and the Services or any actions taken by HummingbirdCRM at Customer's direction. Customer shall indemnify and hold HummingbirdCRM harmless from any claim caused by or arising from any breach of the Software and/or Service conditions and from any unauthorised modification or misuse of the Software and/or Services or Documentation by Customer, its servants, agents or subcontractors.

## 9 Indemnity

9.1 HummingbirdCRM will indemnify Customer from and against any and all losses, damages, claims, costs and expenses (including legal expenses) suffered or incurred by or awarded against Customer as a result of any claim that receipt of the Services and/or use of the Software or Documentation infringes the Intellectual Property of any third party, provided that:

- (a) HummingbirdCRM is given prompt notice of any such claim;
- (b) Customer provides reasonable co-operation to HummingbirdCRM in the defence and settlement of such claim; and
- (c) HummingbirdCRM is given sole authority to defend or settle such claim.

## 10 Confidentiality

10.1 Each party shall keep the other's Information confidential and shall not divulge the same to any third party except for the purposes of the Contract or use it itself for any other purpose without the prior written consent of the other party. The Software shall be deemed to be the Information of HummingbirdCRM.

10.2 The provisions of this clause 10 shall not apply to any Information that the receiving party can show:

- (a) is in the public domain in substantially the same combination as that in which it was disclosed to the receiving party other than as a result of a breach of the Contract or any other obligations of confidentiality;
- (b) is or was lawfully received from a third party not under an obligation of confidentiality with respect thereto;
- (c) is required to be disclosed under operation of law, by court order or by any regulatory body of competent jurisdiction (but then only to the extent and for the purpose required);
- (d) is approved for disclosure in writing; or
- (e) was developed independently of and without reference to confidential information disclosed by the other party, provided always that each party shall provide the other with at least ten days' written notice of its intention to rely upon one or more of these exceptions, such notice specifying details of the exception to be relied upon and the information concerned.

10.3 Each party shall be entitled to divulge the other party's Information to its employees, agents, directors, officers, authorised sub-contractors, professional advisors and consultants who have a need to know the same in connection with the Contract provided that the receiving party shall ensure that such persons are aware of and, shall procure that such persons comply with, these obligations as to confidentiality.

## 11 Data Protection

- 11.1 Within the Contract the terms “controller”, “data subject”, “personal data”, “personal data breach”, “process (“processed” to be construed accordingly) and “processor” shall have the same meanings as in the Data Protection Legislation.
- 11.2 The Parties acknowledge their respective obligations under the Data Protection Legislation and shall give each other such assistance as is reasonable to enable each other to comply with such obligations, however, for the avoidance of doubt the Customer agrees that where HummingbirdCRM has satisfied a contractual obligation under this Agreement, then such satisfaction of the contractual obligation is deemed to satisfy the same or similar requirement under the Data Protection Legislation.
- 11.3 The Customer warrants, represents and undertakes to HummingbirdCRM that it has lawful grounds for processing the Customer Personal Data, and that any instruction given to HummingbirdCRM in relation to the processing of the Customer Personal Data shall be lawful.
- 11.4 The Parties confirm that the Data Protection Schedule at Schedule A contains the necessary information in relation to the subject matter and duration of the processing; the nature and purpose of the processing; the type of personal data; the categories of data subjects; and the obligations and rights of the Customer.
- 11.5 Where HummingbirdCRM processes Customer Personal Data under or in connection with this Agreement, HummingbirdCRM shall:
- 11.5.1 save as required otherwise by law, only process such Customer Personal Data as is necessary to perform its obligations under this Agreement, and only in accordance with the Customer’s documented instructions;
  - 11.5.2 put in place appropriate technical and organisational measures to meet its own obligations under the Data Protection Legislation;
  - 11.5.3 ensure HummingbirdCRM staff who will have access to Customer Personal Data are subject to appropriate confidentiality obligations;
  - 11.5.4 be entitled to engage sub-processors to process Customer Personal Data subject to HummingbirdCRM ensuring that equivalent requirements to those set out in this Clause are imposed on any sub-processor(s), HummingbirdCRM remaining fully liable to the Customer for the performance of the sub-processor’s obligations and where applicable, providing the Customer with reasonable prior notice of any addition, removal or replacement of any such sub-processors;
  - 11.5.5 not process or transfer Customer Personal Data outside the European Economic Area without the prior documented consent of the Customer (which consent shall not be unreasonably withheld or delayed). The Customer hereby consents to the transfers specified in the Data Protection Schedule at Schedule A;
  - 11.5.6 have in place the appropriate technical and organisational security measures to protect the Customer Personal Data against accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access;
  - 11.5.7 notify the Customer without undue delay after becoming aware of any personal data breach involving Customer Personal Data, taking into account the nature of processing and the information available to HummingbirdCRM;
  - 11.5.8 take appropriate technical and organisational measures, insofar as is possible, to assist the Customer in responding to requests for data subjects for access to or rectification, erasure or portability of Customer Personal Data or for restriction of processing or objections to processing of Customer Personal Data (but HummingbirdCRM will not itself respond to any such data subject request except on written instructions from the Customer). Furthermore, HummingbirdCRM will, upon the request of the Customer, provide assistance to the Customer relating to the Customer’s security; impact assessment; data breach reporting requirements; and data protection or data privacy authority consultation obligations under the Data Protection Legislation taking into account the information available to HummingbirdCRM. HummingbirdCRM may charge the Customer its reasonable costs (or the rates otherwise agreed between the Parties) for its time spent and expenses incurred in providing the Customer with co-operation and assistance as required by this Clause;
  - 11.5.9 make available to the Customer such information as the Customer reasonably requests and HummingbirdCRM is reasonably able to provide, and, permit and contribute to such audits, including inspections, conducted by the Customer (or the [Customer’s] appointed auditors), as is necessary to demonstrate HummingbirdCRM’S compliance with the Data Protection Legislation. The Customer will give reasonable notice of any audit and will be fully liable for any associated costs (including those of HummingbirdCRM); and
  - 11.5.10 save as may be required by law, and at the Customer’s cost and option, either delete or return the Customer Personal Data to the Customer on expiry or termination of this Agreement, provided always that nothing in this Clause shall oblige HummingbirdCRM to provide assistance which does not relate directly to the Services performed pursuant to this Agreement.
- 11.6 HummingbirdCRM shall inform the Customer in writing if, in HummingbirdCRM’s opinion, an instruction from the Customer infringes the Data Protection Legislation but only in relation to a breach of General Data Protection Regulation ((EU 2016/679)) and/or other Union or Member State data protection provisions and not jurisdictions outside of these areas. However, the Customer acknowledges that:
- 11.6.1 any information HummingbirdCRM provides is not legal advice or guidance in any way whatsoever, and that HummingbirdCRM makes no warranty or representation regarding the information (express or implied); and
  - 11.6.2 this Clause shall not relieve the Customer of its obligation to ensure that all instructions to HummingbirdCRM comply with all applicable legislation, including all Data Protection Legislation; and



- 11.6.3 HummingbirdCRM may charge the Customer its reasonable costs (or the rates otherwise agreed between the Parties) for its time spent and expenses incurred in providing the Customer with co-operation and assistance as required by this Clause.
- 11.7 Notwithstanding anything to the contrary in this Agreement, if any of the following occur:
- 11.7.1 any changes/modifications to the Data Protection Legislation (including in connection with the withdrawal of the United Kingdom from the European Union and/or the EEA) including the requirement to amend, update, modify or replace any systems HummingbirdCRM use to process the Customer Personal Data;
  - 11.7.2 any new, clarified or amended guidance or policies issued by a supervisory authority;
  - 11.7.3 any direction or instruction issued by a supervisory authority (whether relating to the Customer or HummingbirdCRM in respect of the Services (including any processing of the Customer Personal Data) then any increased effort or costs incurred by HummingbirdCRM in association with the aforementioned shall be additionally chargeable to the Customer.
- 11.8 The Customer shall indemnify and keep indemnified HummingbirdCRM against any liability, fines, claims, demands, expenses and costs (including legal fees) arising as a result of any breach of the Data Protection Legislation by the Customer, or HummingbirdCRM acting in accordance with any instruction, policy or procedure of the Customer.

## 12 Termination

- 12.1 A party shall be entitled to terminate the Contract immediately upon notice in writing to the other if the other:
- (a) commits an irremediable breach of the Contract; or
  - (b) commits a material remediable breach of the Contract and has failed to remedy such breach within thirty (30) days of written notice requiring remediation; or
  - (c) makes an arrangement with or enters into a compromise with its creditors, becomes the subject of a voluntary arrangement, scheme of arrangement, receivership, administration, liquidation, bankruptcy or winding up, is unable to pay its debts or otherwise becomes insolvent or suffers or is the subject of a distraint, execution, event of insolvency or event of bankruptcy or any similar process or event, whether in the United Kingdom or elsewhere.
- 12.2 Save as provided below, each party's rights, liabilities and obligations under the Contract shall cease upon its termination or expiration. Each party's accrued rights and liabilities and the rights and obligations of each party that are expressly or by implication intended to come into force upon, or remain in force following, the termination or expiration of the Contract (including under clauses 6, 8, 10, 11, 12, 14, 17 and 18) shall survive any termination or expiration of the Contract.
- 12.3 Upon expiration or termination of the Contract for any reason:
- (a) HummingbirdCRM shall cease to provide the Services; and
  - (b) all Authorised Users shall stop using the Software and Services;
  - (c) The Customer shall promptly instruct HummingbirdCRM to either; destroy or deliver in a universal CSV file format to the customer, all of customer personal data in its possession or control. HummingbirdCRM shall certify in writing that it has done so.
  - (d) Customer shall promptly and at HummingbirdCRM's option either destroy or deliver to HummingbirdCRM all of HummingbirdCRM's Information and personal data in its possession or control and, if requested to do so by HummingbirdCRM shall certify in writing that it has done so.

## 13 Assignment & Subcontracting

- 13.1 Customer shall not assign, transfer or otherwise part with the Contract or the benefits or obligations thereof in whole or in part without the written consent of HummingbirdCRM.
- 13.2 HummingbirdCRM shall be entitled to assign or transfer the Contract in whole or in part or sub-contract the performance of any part of the Contract to any third party upon written notice to Customer.
- 13.3 References to a party shall include a reference to its successor and permitted assigns.

## 14 Third Party Rights

A person who is not a party to the Contract has no right to enforce any of the provisions of the Contract.

## 15 Notices

Each notice or communication given under or in relation to the Contract shall be in writing and shall be delivered by hand or sent by special delivery post or facsimile to the other party at its address/facsimile number set out below or to such other address/facsimile number as it has previously notified to the sending party in writing. Each such notice shall be deemed to have been served:

- 15.1 in the case of by hand and special delivery, when actually received; or
- 15.2 if sent by special delivery mail and returned marked "gone away" or to the like effect, on return of such special delivery mail; or
- 15.3 if sent by facsimile, on the second working day (being a day other than Saturdays, Sundays and public holidays in the part of the United Kingdom in which the Software is used) after the day of transmission provided that the sending party shall have received an error free transmission report in respect of the notice.

## 16 Force Majeure

- 16.1 Subject to clause 16.2, neither party shall be in breach of the Contract, nor liable for any failure or delay in performance of any obligations under the Contract arising from or attributable to acts, events, omissions or accidents beyond its reasonable control (a "Force Majeure Event"), including acts of God, governmental actions, war or national emergency, acts or threats of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.
- 16.2 The provisions of clause 16.1 shall apply to a party only if it:
  - (a) promptly notifies the other parties in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance; and
  - (b) could not have avoided the effect of the Force Majeure Event by taking precautions which, having regard to all the matters known to it before the Force Majeure Event, it ought reasonably to have taken, but did not; and
  - (c) has used all reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under the Contract in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.
- 16.3 If a Force Majeure Event prevails for a continuous period of more than six months, any party may terminate the Contract by giving 14 days written notice to the other party. On the expiry of this notice period, the Contract will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of the Contract occurring prior to such termination.

## 17 General

- 17.1 No variation of or amendment to the Contract shall be effective unless made in writing and signed by the parties (or their authorised representatives).
- 17.2 The failure or delay of HummingbirdCRM to enforce or to exercise, at any time or for any period of time, any term of or any right, power or privilege arising pursuant to the Contract does not constitute and shall not be construed as a waiver of such term or right, power or privilege and shall in no way affect

HummingbirdCRM's right to later enforce or exercise it, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any further exercise of the same or the exercise of any other remedy, right, power or privilege.

- 17.3 The illegality, invalidity or unenforceability of any provision of, or any part of a provision of, or any right or remedy arising pursuant to this agreement shall not affect in any way the remaining provisions, rights or remedies, which shall be construed as if such illegal, invalid or unenforceable part did not exist.
- 17.4 The Contract (including the schedules) contains all the terms agreed by the parties in relation to its subject matter and supersedes any and all prior agreements, understandings or arrangements between them, whether oral or in writing in relation to such matters.
- 17.5 Except as expressly provided in the Contract, neither party shall not be entitled to assert any credit, set-off or counterclaim against the other in order to justify withholding payment of all or any part of sums due under the Contract.

## 18 Governing Law

- 18.1 The Contract (including any associated non-contractual disputes or claims) is governed by English law and the parties hereby submit to the exclusive jurisdiction of the English courts.

## SCHEDULE A - Personal Data Processing Activity

<b>Subject matter</b> of the processing	Provision of an online Customer Relationship Management System (CRM)
<b>Duration</b> of the processing	From the signing of the Order Form until the anniversary date.
<b>Nature</b> and purpose of the processing	<p>Schedule 1</p> <p>In order to provide the Customer Relationship Management System and support and maintenance to the Customer, HummingbirdCRM requires access to Customer Personal Data. Customer Personal Data is secured, backed up and made available to the Customer.</p> <p>Schedule 2</p> <p>Customer Personal Data is stored within the HummingbirdCRM Partner Hosting Environment based within the EEA.</p> <p>HummingbirdCRM provisions an initial data set of schools and colleges in the UK, taken from publicly accessible data from the relevant authority website including (<a href="https://www.gov.uk/">https://www.gov.uk/</a> and similar sites in other countries)</p>
<b>Type</b> of personal data	Our Data Sharing agreement covers this in full detail. This is available on the below URL
<b>Categories</b> of data subjects	<ul style="list-style-type: none"><li>• Staff</li><li>• Schools and colleges</li><li>• School and college staff</li><li>• Other contacts</li></ul>