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(1) Learning Pool Limited

– and –

(2) \_\_\_\_\_, Governor Support & Development Service

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**SUBSCRIPTION LICENCE**

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**Please return two signed copies of this document to:**  
Learning Pool Ltd  
55 Clarendon Street, Derry, Northern Ireland, BT48 7ER

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## LICENCE

**THIS CONTRACT** is made on the date when the agreement is signed by both parties

**BETWEEN:**

**LEARNING POOL LIMITED** (Company registration number NI 060102) whose registered office is 15 Aughintober Road, Edenacrannon, Dungannon, Co.Tyrone BT70 3AE ("**LP**"); and \_\_\_\_\_ ("**the Authority**") whose registered or principal office is at \_\_\_\_\_

**WHEREAS:**

LP will deliver to the Users on behalf of the Authority the Materials and the Licensed Software on the Media or via the Internet to Use in accordance with the terms and conditions set out herein.

The Licensed Software enables the User to use the Learning Pool Modern Governor Content in accordance with the terms of this Agreement for the purpose of facilitating e-learning on behalf of the Authority.

**NOW IT IS HEREBY AGREED** as follows:

**PART A - DEFINITIONS**

**1. DEFINITIONS**

- 1.1 "**Agreement**" means this agreement governing the supply and Use of the Materials and the Licensed Software on the Media or via the Internet and participation in the e-Learning Environment;
- 1.2 "**e-Learning Environment**" means the "e-learning for school governors" environment that the User is able to access using the Licensed Software via the Modern Governor website which contains the Content. Detail of the specific service provided to the Authority is defined in Schedule 2;
- 1.3 "**Intellectual Property Rights**" (IPRs) means rights, title and interest in patents, trade marks and trade and business names (including service marks) and design rights (whether any of the above rights are registered, unregistered or form pending applications) and copyright (including copyright in programs), database rights, know how (including trade secrets and confidential business information) and any similar or analogous rights to any of the above, whether arising or granted under the law of England and Wales or of any other jurisdiction;
- 1.4 "**Content**" means the content published on the Modern Governor website comprised from time to time in the modules for the e-Learning Environment as outlined in Schedule 3 and which Users access through the Modern Governor website;
- 1.5 "**Learning Pool Software**" means the software comprising the authoring tool and the Content, the IPRs in which are either owned by, or validly licensed to LP;
- 1.6 "**Licence**" means the Licence granted by LP pursuant to Part B of this Agreement;
- 1.7 "**Licence Fees**" means the fees set out in Clause 5 of this Agreement;
- 1.8 "**Licensed Software**" means the Modern Governor and Learning Pool Software licensed to the Authority by LP as specified in Clause 2;
- 1.9 "**Materials**" means any guidance notes and documentation accompanying the Licensed

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Software and the Media;

- 1.10 **“Media”** means the CD Rom format in which the Licensed Software is recorded;
- 1.11 **“Modern Governor website”** means the website used to gain access to the e-Learning Environment found at [www.moderngovernor.com](http://www.moderngovernor.com)
- 1.12 **“Region”** means the area encompassed in the \_\_\_\_\_ region as at the date of this Agreement;
- 1.13 **“Service Levels”** means the service levels set out in Schedule 1 to this Agreement;
- 1.14 **“Use”** means the loading and subsequent processing of the Licensed Software and possession by the Users of the Media for the term of this Agreement and to exchange and contribute information and participate in the e-Learning Environment. Such use shall for the avoidance of doubt not include the ability or right to copy, modify, adapt or amend any Content;
- 1.15 **“User authority”** means the local education authority responsible for providing governor services;
- 1.16 **“User”** means all school governors and the authorised representatives (including members of management boards and management committees) of the User authority, (in each case only for so long as they remain school governors, board /committee members, authorised representatives or employees of the authority). The Authority will use all reasonable endeavours to ensure that all Users comply with the terms of this Agreement in relation to any such use.

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## PART B - LICENCE

### 2. LICENCE TERMS

- 2.1 Subject to the terms and conditions of this Agreement, LP hereby grants to the Authority for the use only of the Users a non-transferable non-exclusive licence to Use the Licensed Software for the duration specified in Clause 4 below and participate in the e-Learning Environment in consideration of the Authority paying the Licence Fees.
- 2.2 The Authority shall only permit Users to use the Licensed Software. The Authority shall not permit or allow any other persons to use the Licensed Software unless the Authority has obtained prior written consent from LP to allow such other persons to use the Licensed Software.
- 2.3 Subject always to the terms of this Agreement, the Authority shall be entitled to permit Users to use the Licensed Software outside of the general place of business of the Authority.
- 2.4 If an authorised User ceases to be either a school governor (as referred to in the definition of User) or authorised to Use the Licensed Software during the term of this Agreement, the User Authority shall endeavour to ensure that such person shall immediately cease to Use the Licensed Software and will stop participating in the e-Learning Environment. In such circumstances the User Authority must notify LP immediately and LP will cancel the account for that individual.
- 2.5 The Authority shall not (and shall procure that none of its employees shall):
- 2.5.1 permit any third party to use the Licensed Software; or
  - 2.5.2 use the Licensed Software on behalf of or for the benefit of any third party in any way whatsoever; or
  - 2.5.3 permit, facilitate or assist a third party to gain access to the Learning Pool Content via the Learning Pool website or otherwise; or
  - 2.5.4 permit, facilitate or assist a third party in participating in the e-Learning Environment; or
  - 2.5.5 reverse engineer, decompile, amend, modify, vary, adapt, translate or perform any similar type of operation on the Licensed Software for any purpose or permit or allow any third party to do any of the foregoing; or
  - 2.5.6 carry out itself or request, permit or authorise any third party to provide any support or maintenance services in respect of the Licensed Software;
- unless it has obtained prior written consent from LP.
- 2.6 The Authority hereby acknowledges that the Users are licensed to Use the Licensed Software only in accordance with the express terms of this Agreement and not further or otherwise.
- 2.7 For information purposes only, the Licensed Software is further described at [www.moderngovernor.com](http://www.moderngovernor.com) showing details of the content and services currently available to Users. This description is for information purposes only and does not form part of this Agreement nor is it contractually binding between LP and the Authority.

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### **3. INSTALLATION**

The Licensed Software and Content will be available via the Modern Governor website from \_\_\_\_\_

### **4. LICENCE DURATION**

4.1 This Agreement shall be deemed to have commenced on the date of this agreement and will, subject to Clause 4.2, continue for a 12 month period until \_\_\_\_\_ or such other period as may be agreed in writing between the parties unless it is terminated in accordance with the provisions in Clause 12.

4.2 The duration of the license period may be extended for such further period(s) as mutually agreed.

### **5. LICENCE FEES**

5.1 The fees for this Agreement are outlined in Schedule 4 attached and are dependent on the number of schools subscribing to the service. Learning Pool will only invoice the Authority for those schools who subscribe to the service.

5.2 LP will invoice the Authority for the payment identified in Clause 5.1 above plus VAT, on the dates outlined in the covering letter to this Agreement and payment of such invoices shall be due within 30 days from the date of the invoice.

### **6. OWNERSHIP RIGHTS**

6.1 The Licensed Software and the Materials including the IPRs in such are owned by, or licensed to, LP and LP is entitled to grant such licences to use the Learning Pool Software pursuant to the terms of this Agreement.

6.2 LP reserves the right to grant licences to Use the Licensed Software and the Materials to third parties.

## **PART C – E- LEARNING ENVIRONMENT**

### **7. E-LEARNING ENVIRONMENT**

7.1 Individual Users shall register via the Modern Governor website and be bound by the terms and conditions set out on the Modern Governor website.

7.2 LP undertakes to take reasonable steps to ensure that the e-Learning Environment is reasonably accessible in accordance with generally applied standards for web enabled technology. This includes the development of content compliant with assistive technologies such as screen readers.

7.3 In the event that Content is not accessible, for whatever reason, it is LP's policy to make reasonable adjustments in order to facilitate access to web-based information, services and learning resources in the e-Learning Environment by as many users as is reasonably possible.

7.4 LP shall use reasonable endeavours to ensure that the e-Learning Environment as developed or created after the date of this agreement complies with organisations' equality policies. This includes ensuring that content and case studies do not contain any inappropriate or offensive materials and avoids stereotyping by promoting positive images of a diverse community. A diverse community includes gender, race, ethnicity, disability, sexuality, religious belief and age.

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## **8. CONTENT**

- 8.1 The IPRs in the Content are licensed to or owned by LP for the Authority to Use in accordance with the provisions of Part B of this Agreement.
- 8.2 LP confirms that there is no Personal Data contained within the Content and/or that the authors of such Content have expressly consented to the publication of their details.

## **PART D – INTELLECTUAL PROPERTY, DATA PROTECTION AND CONFIDENTIALITY**

### **9. DATA PROTECTION**

Both parties will comply with their respective obligations under the Data Protection Act 1998. The Authority agrees and acknowledges that the publication of the name and contact details of the Authority on or in connection with the e-Learning Environment and the Learning Pool website and the sharing and distribution of such details with other participants in the e-Learning Environment shall not constitute a breach of the Data Protection Act 1988 and the Authority expressly agrees and consents to such use. The Authority shall be entitled to withdraw such consent by notice in writing to LP which makes specific reference to this Clause. The Authority warrants to LP that any personal data relating to other users obtained by the Authority or its employees or other users shall be used for the sole purpose of the proper use of the e-Learning Environment.

### **10. WARRANTY BY LP**

- 10.1 LP warrants that it will use all reasonable endeavours to ensure that the Licensed Software, Content, Materials, Media and access to the e-Learning Environment is free from defects and shall comply with the functions defined. LP shall remedy any breach incurred by using its best endeavours to promptly repair any error or replace the same without any cost to the Authority.
- 10.2 LP will indemnify and keep indemnified the Authority against any claims, actions and proceedings brought against the Authority and all costs, damages, liabilities and expenses incurred by the Authority out of, or in the course of, or by reason of the Licensed Software, Content, Materials and Media which are due to the negligence, omission or default of LP, its employees or sub-contractors.
- 10.3 Save for liability for death or personal injury which cannot be limited, LP's entire liability to the Authority under this Agreement shall be limited to the Licence Fees paid by the Authority under this Agreement.

### **11. SERVICE LEVELS**

- 11.1 LP will use its reasonable endeavours to ensure that the Licensed Software performs in accordance with the Service Levels.
- 11.2 Failure to meet such Service Levels shall be dealt with in accordance with the provisions of Schedule 1 which shall be the sole remedy of the Authority against LP.

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## **PART F - MISCELLANEOUS**

### **12. TERMINATION**

- 12.1 LP shall have power to terminate the Agreement at any time by giving to the Authority one month's written notice. Upon the expiry of the notice the Agreement shall be terminated without prejudice to the rights of the parties accrued to the date of termination. LP may extend the period of notice at any time before it expires.
- 12.2 If either the Authority or LP commits a material breach of any term of this Agreement and (in the case of a breach capable of being remedied) the breaching party shall have failed, within 30 days after the receipt of a written request by the other party, to have remedied that breach, then the non breaching party may terminate the Agreement forthwith and with no further notice.
- 12.3 Upon termination of this Agreement under Clause 12.1 above, LP shall be liable to refund to the Authority:
- 12.3.1 Where the Agreement is for twelve months and has more than ten months unexpired of the License term to run, the full License Fee,
- 12.3.2 Where the Agreement has ten months or less unexpired of the License term to run (irrespective of the duration of the License term), the full License Fee chargeable for the License term less such portion as represents the unexpired term of the License term calculated on a monthly pro rata basis.
- 12.4 Upon termination of this Agreement for Authority default the Authority shall (and shall procure that each User shall) immediately cease to use the Licensed Software, the Materials and cease to participate in the e-Learning Environment. The Authority shall return to LP the Licensed Software and Materials and all copies of the whole or part thereof or, if requested by LP, shall destroy the same and certify in writing to LP that they have been destroyed. In such circumstances the Authority shall still be liable to pay the balance of any outstanding Licence Fees that remain unpaid at the time of termination which will immediately become due and payable within 30 days of the date of termination.
- 12.5 Upon termination of this Agreement for LP default the Authority shall (and shall procure that each User shall) immediately cease to use the Licensed Software, the Materials and cease to participate in the e-Learning Environment. The Authority shall return to LP the Licensed Software and the Materials and all copies of the whole or part thereof or, if requested by LP, shall destroy the same and certify in writing to LP that they have been destroyed. In such circumstances the sole remedy of the Authority shall be that LP will refund to the Authority any Licence Fees that have been paid for the year in which the breach occurs within 30 days of the date of termination.
- 12.6 For the avoidance of doubt, where the Agreement is terminated under Condition 12.1, LP shall not be liable to refund or otherwise pay to the Authority any sums other than those stated to be payable under Condition 12.3 above. LP shall not in any case be liable to pay any sum which, when taken together with any sums paid or due or becoming due to the Authority under this Agreement, shall exceed the total Licence Fee paid by the Authority.

### **13. ADDITIONAL CONTENT ASSIGNMENTS**

It is envisaged that the Authority may wish to commission additional content to be produced by LP, and LP agrees to produce and deliver such additional content, on terms to be agreed on a case by case basis between the Authority and LP.

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**14. ASSIGNMENT**

14.1 The Authority shall not be entitled to assign, sub-licence or otherwise transfer the Licence or the benefit or burden of this Agreement whether voluntarily or involuntarily or by operation of law in whole or in part without prior written consent from LP.

14.2 LP shall be freely entitled to assign, sub-licence or otherwise transfer the Licence and/or the benefit and/or burden of this Agreement in whole or in part.

**15. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement and understanding between the parties and supersedes any previous agreement between the parties relating to the subject matter of this Agreement.

**16. EXCLUSION OF THIRD PARTY RIGHTS**

The parties agree that no third party is intended to have any benefit under this Agreement for the purposes of the Contracts (Rights of Third Parties) Act 1999.

**17. LAW AND JURISDICTION**

This Agreement (including this clause) shall be construed in accordance with the laws of England and Wales and the parties hereby submit to the exclusive jurisdiction of the Courts of England and Wales in respect of disputes arising.

**18. SEVERANCE**

If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid, unlawful or unenforceable to any extent, such term or condition shall be to that extent be severed from the remaining terms and conditions which shall continue to be valid to the fullest extent permitted by law.

**19. VARIATIONS**

Any variations to this Agreement may only take effect following both parties giving their consent to the proposed variation in writing.

**Signed** for or on behalf of **Learning Pool Limited**

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

**Signed** for and on behalf of \_\_\_\_\_, **Governor Development Service**

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

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## Schedule 1

### Service Levels

The following definitions apply to the Service Levels and activities described below:

- “Critical Fault” means any part or feature of the Learning Pool Software that does not function correctly as follows:
- (i) The Learning Pool or Modern Governor websites are unavailable for connection due to faults in the server software, website files or hardware faults within the server itself;
  - (ii) Details of shared files are incorrectly loaded to the database;
  - (iii) Any tool consistently causes operating system errors or permanently stops responding to commands,
- and thereby prevents the Learning Pool Software from being used and available and arising from the negligence or wilful misconduct of LP. This specifically excludes:
- Faults arising from misuse by the Authority or Users;
  - Attempts to re-engineer the Learning Pool Software by the Authority or Users;
  - Faults caused by Authority owned hardware, interfacing with Authority provided software and networking issues relating to the configuration of the Authority network.
- “Installation Site” means a location within the Authority's premises (or other location by agreement) where the Learning Pool Software is installed or is to be installed.
- “Learning Pool Software” shall have the meaning given to it in Clause 1 of this Agreement.
- “Non-Critical Fault” means any part or feature of the Learning Pool Software that does not function correctly as follows:
- (i) The Authoring tool fails to or is unable to, produce HTML files that can be displayed correctly in a standard web browser from any given template type;
  - (ii) User interface errors that do not prevent the tools from operating in anyway, but may cause confusion or incorrect operation by Users,
- but does not prevent the Learning Pool Software from being used and available in all other respects and arising from the negligence or wilful misconduct of LP. This specifically excludes:
- Faults arising from misuse by the Authority or the Users;
  - Attempts to re-engineer the Learning Pool Software by the Authority or the Users;
  - Faults caused by Authority owned hardware, interfacing with Authority provided software and networking issues relating to the configuration of the Authority network;

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“Post Subscription”	means the period commencing on the date of submission of the first invoice for the Learning Pool Software by LP and continuing for the period of the Agreement as further described in Clause 4;
“Third Party Software”	means any software not developed or commissioned to be developed by LP, but is provided to members of the Learning Pool community as part of the subscription service;
“Websites”	means those websites specifically developed and offered for use by the Learning Pool community by LP. This includes but is not limited to the main website for this service (www.moderngovernor.com). It explicitly excludes any other website that is linked to or from the Learning Pool websites.

## 1. General

In accordance with the provisions of this Agreement the Authority will be entitled to have access to:

- 1.1 All Learning Pool Software;
- 1.2 Any Third Party Software and Modern Governor Content currently available to subscribers to the e-Learning Environment;
- 1.3 Access to the helpdesk and other support channels in accordance with this Schedule 1;
- 1.4 Training and on-going coaching support in accordance with this Schedule 1.

## 2. Technical

### 2.1 Websites

LP shall use reasonable endeavours to ensure that the Websites will normally be available 24 hours a day. However, both parties agree and acknowledge that the nature of web technology is such that sometimes servers do stop responding to requests. If this occurs during normal office hours LP will use reasonable endeavours to restart the server within 2 hours of receiving notification of the server not responding. If the failure cannot be rectified in this way and a more serious fault is discovered then the process for Learning Pool Software faults (described below) will apply.

### 2.2 Learning Pool Software tools

Problems with Learning Pool Software tools will be dealt with in the following ways:

### 2.3 Non-Critical Faults

LP will use reasonable endeavours to acknowledge a report of a non-critical fault within 8 hours. LP will assess the fault and within 1 working day publish details on the Modern Governor Website of the fault, its implications, any available “work around” and an expected date when LP will release a patch or revised version that addresses the fault. Non-Critical Faults will normally be resolved at the next software maintenance release.

### 2.4 Critical Faults

LP will use reasonable endeavours to acknowledge a report of a critical fault within 1 hour. LP will then contact the Authority within 4 hours to inform it of what it is doing to resolve the problem. At the same time LP will post details of the fault on the Modern Governor website. Within 1 working day of the original report LP will contact the Authority to inform it of when it anticipates the issue will be resolved.

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## 2.5 Third Party Software

LP is unable to accept responsibility for or offer guarantees concerning fixes for faults in Third Party Software. Upon notification of a fault LP will use reasonable endeavours to enter into discussions with the provider of the Third Party Software and will attempt to elicit a resolution. The nature and results of this process will be reported to the e-Learning Environment community as a whole.

## 2.6 Speed of operation

Due to the variability of hardware platforms, network infrastructures and the non-deterministic nature of Internet transport services, the parties agree and acknowledge that LP is unable to guarantee or even predict speed of operation of software tools or download times.

# 3. Support

## 3.1 Helpdesk

Help desk support is available via telephone or email during normal office hours. Telephone numbers and email addresses for support are provided in the joining pack and on the Modern Governor website and these should be used for all support requests.

## 3.2 Response times.

LP will use reasonable endeavours to respond to helpdesk enquiries within 24 hours. Where the complexity of the question makes it impossible to provide resolution within this period LP will contact the Authority to inform it of the likely duration of the delay and what it is doing to find the solution. If the delay is longer than 5 working days LP will contact the Authority on the fifth day to report any progress. Exceptions to these response times are those detailed under Technical issues relating to website and software faults.

# 4. Measures

## 4.1 Response times

All response times are calculated from the point in time at which LP receives an enquiry. This time will be stated in the initial acknowledgement either by email or telephone. If the Authority has not received an acknowledgement within 24 hours of its enquiry it should assume that the enquiry has not been received and resubmit its enquiry by telephone to the helpdesk number. Where this still fails to elicit the required acknowledgement the Authority should contact the Learning Pool team direct in accordance with the instructions in the joining pack and on the Modern Governor website.

## 4.2 System and websites availability

This will be measured using a variety of methods including industry standard monitoring tools and standards. Reports from these measurements will be published monthly in the technical section of the Modern Governor website.

# 5. Compensation

Where a Critical Fault in the Learning Pool Software completely prevents the Authority from participating in the e-Learning Environment for more than fourteen consecutive days in any calendar month LP will refund one twelfth of the Authority's subscription charges for each month in which this occurs, where the licence period is for 12 months.

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## Schedule 2

### Description of service

The subscription to Modern Governor includes:

- Right to use school governor specific e-learning modules produced by Learning Pool and available from time to time on the Modern Governor website. This content will be made available in line with the plan outlined in Schedule 3.
- Access to the Learning Pool Modern Governor community including discussion forums and the ability to share e-learning assets easily among fellow practitioners.
- Provision of advertising and promotional material to advertise use of the facility and availability of new content.

Additional Services provided to \_\_\_\_\_, Governor Development Service include:

- Commitment to roll out additional e-learning modules substantially in accordance with Schedule 3 attached hereto (subject to variation if after discussions with \_\_\_\_\_, Governor Development Services and other licensees there is a desire to include other content or change the order of the roll out);

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### Schedule 3

#### Rollout Plan

Learning Pool reserve the right to change title, content and ordering of modules as a result of feedback from its users and consultants at any time.

My role as a Governor  
Community Cohesion  
OFSTED School Inspection process and performance data  
Health and Safety  
School improvement  
Admissions, Discipline and Exclusion procedures  
Child protection and External Agencies  
Succession planning and Headship recruitment  
Understanding School Finance  
My role as Chair of Governors  
Staff recruitment  
Performance Management

SAMPLE

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**Schedule 4**

<<List of schools to be appended>>

SAMPLE