

Giglets Access Licence Agreement (ALA)
Version: 31 July 2018

The Customer's attention is particularly drawn to the provisions of clause 10.

1. Interpretation

1.1. **Definitions.** In these Conditions, the following definitions apply:

"Authorised Users" means Educators, Learners and other users who are authorised by the Customer to access the Portals in accordance with the Contract;

"Business Day" means a day (other than a Saturday, Sunday or public holiday) when banks in Glasgow in Scotland are open for business;

"Charges" means the charges payable by the Customer for access to the Portals as set out in the Order and payable in accordance with clause 6;

"Commencement Date" has the meaning set out in clause 2.2;

"Conditions" means these terms and conditions as amended from time to time in accordance with clause 14.7;

"Contract" means the contract between the Supplier and the Customer relating to access to the Portals in accordance with these Conditions;

"Customer" means the person or entity being a school, home school, nursery, college, university or other learning establishment which purchases access to the Portals under the Contract;

"Customer's Learning Establishment" means the school, home school, nursery, college, university, tutoring centre, distance learning or other learning establishment of the Customer;

"Data Controller" has the meaning given to it in the GDPR;

"Data Processor" has the meaning given to it in the GDPR;

"Educators" means persons qualified to provide education services who are providing such services for the Customer at the Customer's Learning Establishment, including head Educators, student Educators, administrators, home Educators, lecturers and other teaching staff; and

"EULA" means the end user licence agreement which Authorised Users are required to adhere to whilst accessing the Portals, a copy of which shall be provided by the Supplier to the Customer on request;

"GDPR" means, as applicable, the European General Data Protection Regulation and any UK and/or Scottish legislation implementing or reflecting it;

"Intellectual Property Rights" means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in software, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

"Learners" means pupils, students and other learners who are registered to attend and are attending the Customer's Learning Establishment;

"Order" means the Customer's order for access to the Portals as set out in an order form or communicated by the Customer to the Supplier verbally or otherwise in writing (including by email);

"Personal Data" has the meaning given to it in the GDPR;

"Portals" means the Supplier's portals such as those currently called "Giglets", "the Giglets Literacy Resource" and portals operated by Giglets on behalf of partners such as "WorldStories" and "GBC" as well as the portal

previously called "The Learning Cloud" which contain digital educational content;

"Process" and **"Processing"** have the meaning given to them in the GDPR;

"Secure Network" means a network where access is on a unique user basis enabled through a password known only to the user and which is secure;

"Specification" means the description or specification of the Portals provided in writing by the Supplier to the Customer;

"Supplier" means Giglets Limited t/a Giglets Education, a company registered in Scotland with company number SC395574 of 44 Bank Street, Kilmarnock, East Ayrshire KA1 1HA, GB-Scotland;

"Supplier Materials" has the meaning set out in clause 5.1.14;

"Term" has the meaning set out in clause 11.1.

1.2. **Construction.** In these Conditions, the following rules apply:

1.2.1. a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.2.2.a reference to a party includes its personal representatives, successors or permitted assigns;

1.2.3. a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision;

1.2.4. any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

1.2.5. a reference to **writing** or **written** includes e-mail but not fax.

2. Basis of contract

2.1. The Order constitutes an offer by the Customer to purchase access to the Portals during the Term in accordance with these Conditions.

2.2. The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order (which may be constituted by the Supplier issuing an invoice) at which point and on which date the Contract shall come into existence ("**Commencement Date**").

2.3. The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

2.4. Any descriptive matter or advertising material issued by the Supplier (on its website or otherwise) is issued or published for the sole purpose of giving an approximate idea of the Portals. It shall not form part of the Contract or have any contractual force.

2.5. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, tender document, practice or course of dealing.

2.6. Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

3. Grant of Licence

3.1. The Supplier grants the Customer a non-exclusive, non-transferable licence to permit Authorised Users to access the Portals via a Secure Network for the Customer's internal educational purposes during the Term only. The Customer may create profiles for Authorised Users in the Portals and permit Authorised Users to create profiles for themselves or other Authorised Users in the Portals in accordance with the licence granted in this Condition 3.

- 3.2. Where a maximum number of Authorised Users has been specified in the Order the Customer shall ensure that the number of Authorised Users it permits to access the Portals does not exceed this number.
- 3.3. The Supplier may agree terms upon which the number of Authorised Users may be increased subject to payment of any increased Charges. The number of Authorised Users may not be reduced without the Supplier's express written consent.

4. Supplier's Rights and Obligations

- 4.1. The Supplier shall use reasonable endeavours to ensure that each Portal operates properly at all times, excluding:
 - 4.1.1. time during which planned maintenance (as notified by the Supplier to the Customer) is being carried out;
 - 4.1.2. times for unscheduled maintenance to be carried out, provided that the Supplier has used reasonable endeavours to give the Customer notice of such unscheduled maintenance;
 - 4.1.3. downtime attributable to failure of the Supplier's suppliers or subcontractors; and
 - 4.1.4. downtime attributable to the Customer's network, infrastructure or operating system.
- 4.2. The Customer can contact the Supplier through the online enquiry form on the Supplier website www.giglets.com, the email info@giglets.com and the telephone numbers shown on the Supplier website, and can submit support requests relating to the Portals during the hours of 08:00 to 18:00 on Business Days only. The Supplier shall respond to such requests within a reasonable timeframe and will use reasonable endeavours to resolve any reported issues.
- 4.3. The Customer acknowledges that from time to time during the Term, the Supplier may apply upgrades to the Portals, and that such upgrades may result in changes to the appearance and/or functionality of the Portals.
- 4.4. The Supplier may make changes to the content of the Portals (including the addition and/or removal of content) from time to time.
- 4.5. It is acknowledged that the Supplier has the right to contact the Customer and the Authorised Users through the Portals' messaging systems and by email or phone as provided by the Customer and the Authorised Users to inform the Customer and the Authorised Users about information relating to the Portals and related services. The Supplier will not pass any Customer and Authorised Users' contact details to third parties.

5. Customer's Obligations

- 5.1. The Customer shall:
 - 5.1.1. keep its details (including login details and passwords) for access to the Portals confidential;
 - 5.1.2. procure that Authorised Users comply with the EULA;
 - 5.1.3. effectively communicate to Authorised Users:
 - 5.1.3.1. the data protection statements contained within parts 1 and 2 of the Schedule in accordance with clause 6;
 - 5.1.3.2. the purpose for which Authorised Users may use the Portals (being internal educational purposes only);
 - 5.1.3.3. what constitutes inappropriate or unauthorised use of the Portals (including any use which is prohibited by the EULA);
 - 5.1.4. be responsible for the actions of Authorised Users and any Authorised User's breach of the EULA;
 - 5.1.5. ensure that Authorised Users keep any login details and passwords confidential;
 - 5.1.6. ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time and also that it is properly maintained during the Term;
 - 5.1.7. require and procure that any computers or devices used in connection with the Portals meet all relevant technical specifications required to use the Portals;
 - 5.1.8. use all reasonable endeavours to prevent any

unauthorised access to, or use of, the Portals and in the event of any such unauthorised access or use, promptly notify the Supplier;

- 5.1.9. ensure that the terms of the Order are complete and accurate;
- 5.1.10. co-operate with the Supplier in all matters relating to the Contract;
- 5.1.11. provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises and other facilities as reasonably required by the Supplier to perform its obligations under the Contract;
- 5.1.12. provide the Supplier with such information and materials as the Supplier may reasonably require in relation to the Contract (including information which the Supplier requires to grant access to the Portals) and ensure that such information is accurate in all material respects;
- 5.1.13. obtain and maintain all necessary licences, permissions and consents which may be required in relation to the Contract;
- 5.1.14. keep and maintain all materials, documents, written instructions and other property of the Supplier ("**Supplier Materials**") at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.
- 5.2. The Customer acknowledges that the Customer is responsible for overseeing, monitoring and moderating:
 - 5.2.1. use of the Portals by Authorised Users; and
 - 5.2.2. all material submitted by Authorised Users to the Portals;
 - 5.2.3. and the Customer shall immediately remove from the Portals any material submitted by an Authorised User which is inappropriate or otherwise breaches the terms of the EULA.
- 5.3. If the Customer becomes aware (or should have become aware) that any Portal has been used by an Authorised User inappropriately or otherwise in breach of the EULA the Customer shall immediately notify the Supplier and delete the profile of such Authorised User and ensure that they do not in the future access the Portals unless otherwise agreed by the Supplier.
- 5.4. If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):
 - 5.4.1. the Supplier shall without limiting its other rights or remedies have the right to rely on the Customer Default to relieve it from the performance of any of its obligations under the Contract;
 - 5.4.2. the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this Condition 5.4; and
 - 5.4.3. the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.
- 6. Charges and Payment**
- 6.1. The Supplier shall not be required to grant the Customer access to the Portals in accordance with clause 3.1 until payment of the Charges have been received in full.
- 6.2. The Customer shall pay each invoice submitted by the Supplier:
 - 6.2.1. within 30 days of the date of the invoice;
 - 6.2.2. in full and in cleared funds to a bank account nominated in writing by the Supplier, and

6.2.3. time for payment shall be of the essence of the Contract.

6.3. All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being ("VAT"). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT.

6.4. If the Supplier does not receive payment of the Charges or of the Customer breaches any term of the Contract the Supplier may temporarily disable the Customer (and its Authorised Users') passwords, account and access to all or part of the Portals and the Supplier shall be under no obligation to provide access to the Portals while the payments concerned remain unpaid. If such amounts remain unpaid for one (1) month or more the Supplier may delete the Customer's account (which for the avoidance of doubt shall include deletion of Authorised Users' profiles) and upon deletion the Contract shall terminate.

6.5. Without limiting its other rights and remedies, if the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per cent per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

6.6. The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

7. Intellectual Property Rights

7.1. All Intellectual Property Rights in the Portals (and the content in the Portals) are and shall remain the property of the Supplier or its third party licensors.

7.2. It is a condition of use of the Portals that the Supplier is granted a non-exclusive licence to use, in connection with the Portals, a licence of all content which is not Personal Data submitted to the Portal by any Authorised User who is not a Learner and the Customer hereby assigns to the Supplier all its non-exclusive rights in and to such content as employer of each Educator or otherwise.

7.3. The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.

7.4. All Supplier Materials are the exclusive property of the Supplier.

8. Data Protection

8.1. The Customer acknowledges and agrees that for the purposes of the GDPR, the Supplier shall be the Data Processor and the Customer shall be the Data Controller of any Personal Data that Authorised Users upload to the Portals ("**Portals Personal Data**"), including but not limited to documents, video, image and audio files. As Data Processor, the Supplier shall:

8.1.1. only Process Portals Personal Data strictly in accordance with the GDPR and these Conditions; and

8.1.2. put in place appropriate technical and organisational processes and procedures to safeguard against any unauthorised and unlawful Processing of, and against accidental loss or destruction of, or damage to, the Portals Personal Data.

8.2. The Customer warrants that it or its Authorised User has authority and consent to submit any such Personal Data to the Portals and that any relevant data subject is aware of such submission and the basis upon which it is made.

8.3. The Customer acknowledges that the Supplier may review the Portals Personal Data from time to time and use some or all of the Portals Personal Data for purposes related to the Supplier's business. In the event that the Supplier does so, the Customer acknowledges that the Supplier shall become the Data Controller of any such Portals Personal Data.

9. Confidentiality

9.1. The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Supplier, its employees, agents or subcontractors, and any other confidential information concerning the Supplier's business, its products and services which the Customer may obtain. The Customer shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the Customer's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The Supplier may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 9 shall survive termination of the Contract.

10. Limitation of Liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

10.1. Nothing in these Conditions shall limit or exclude the Supplier's liability for:

10.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; or

10.1.2. fraud or fraudulent misrepresentation.

10.2. Subject to Condition 10.1:

10.2.1. the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, delict (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

10.2.2. the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, delict (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the average annual amount of the Charges payable by the Customer.

10.3. The Supplier does not guarantee that any content made available through the Portals is accurate, complete or error free. The Customer undertakes not to rely upon any content made available in the Portals. Any reliance the Customer places upon the Portals or the content made available in the Portals is entirely at the customer's own risk and the Customer undertakes not to hold the Supplier liable for any loss, cost, damage or expense incurred as a result of such reliance.

10.4. The Supplier does not guarantee that the Portals will be free of errors or defects or operate in an uninterrupted manner.

- 10.5. The Supplier does not guarantee that the Portals will not interfere with the performance or operation of the computer or device through which it is accessed or other software installed thereon or peripherals connected thereto (and any software installed on said peripherals).
- 10.6. The Supplier does not guarantee that the Portals will be free of viruses or other malicious code.
- 10.7. The Supplier does not guarantee that the Portals is suitable for any particular purpose or that it will meet the Customer's requirements, irrespective of whether that purpose or those requirements are known to the Supplier.
- 10.8. Other than as expressly stated hereunder the Supplier excludes all guarantees, warranties, conditions and representations whether express or implied.
- 10.9. This Condition 10 shall survive termination of these Contracts.
- 11. Term and Termination**
- 11.1. The Contract shall, unless otherwise terminated as provided for in the Contract, commence on the Commencement Date and continue for the period set out in the Order (the "Initial Term") and thereafter shall automatically renew for successive periods of one (1) year (each a "Renewal Period") (the Initial Term and the Renewal Period together being the "Term") unless and until terminated by either party giving to the other at least three (3) full calendar months' written notice to expire at the end of the Initial Term or any subsequent Renewal Period.
- 11.2. Without limiting its other rights or remedies, the Supplier may terminate the Contract by giving the Customer thirty (30) days' written notice at any time following which the Supplier shall repay to the Customer on a pro rata basis any Charges paid in advance by the Customer relating to the period after the date of termination.
- 11.3. Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 11.3.1. the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within thirty (30) days of that party being notified in writing to do so;
- 11.3.2. if the other party ceases to do business or becomes insolvent or an order is made or a resolution passed for the winding up of it or an order is made for the appointment of an administrator to manage its affairs business or property, or a receiver is appointed of its assets or undertakings or circumstances arise which entitle the Court or a creditor to appoint a receiver or manager or which entitle the Court to make a winding up order, or it suffers any similar or analogous action in consequence of debt.
- 11.4. Without limiting its other rights or remedies (including without limitation those in Condition 6.4), the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment and fails to pay all outstanding amounts within 30 days after being notified in writing to do so.
- 12. Consequences of Termination**
- 12.1. On termination of the Contract for any reason:
- 12.1.1. all rights and licences granted under the Contract in favour of the Customer shall immediately terminate and the Customer shall ensure that Authorised Users cease accessing the Portals immediately;
- 12.1.2. the Customer shall permanently erase its login details and password and the login details and passwords of Authorised Users;
- 12.1.3. the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest;
- 12.1.4. the Customer shall return all of the Supplier Materials in its possession or under its control. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- 12.1.5. the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry;
- 12.1.6. clauses which expressly or by implication survive termination shall continue in full force and effect; and
- 12.1.7. the Supplier shall return or destroy, at the Customer's discretion, all Personal Data within any content uploaded by an Authorised User.
- 13. Force Majeure**
- 13.1. For the purposes of this Contract, "Force Majeure Event" means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 13.2. The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 13.3. If the Force Majeure Event prevents the Supplier from performing any of its obligations for more than four (4) weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.
- 14. General**
- 14.1. Assignment and other dealings.**
- 14.1.1. The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- 14.1.2. The Customer shall not, without the prior written consent of the Supplier, assign, transfer, mortgage, charge, subcontract, or deal in any other manner with any or all of its rights or obligations under the Contract.
- 14.2. Notices.**
- 14.2.1. Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid registered first class post or other recorded next working day delivery service, commercial courier, or e-mail.
- 14.2.2. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Condition 14.2.1; if sent by recorded pre-paid first class post or other recorded next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by e-mail, one Business Day after transmission provided that the sender does not

receive a notification that delivery has been unsuccessful.

14.2.3. The provisions of this Condition shall not apply to the service of any proceedings or other documents in any legal action.

14.3. **Severance.**

14.3.1. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

14.3.2. If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

14.4. **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

14.5. **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

14.6. **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

14.7. **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Supplier. The Supplier may vary these Conditions at any time by giving three months' notice to the Customer. If such variation is material, the Customer shall be entitled to terminate the Contract by giving three months' notice in writing to the Supplier within one month of the Customer being notified of the variation. If the Supplier withdraws the variation during such notice period, the notice of termination shall be deemed withdrawn and of no effect.

14.8. **Governing law.** This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the laws of Scotland.

14.9. **Jurisdiction.** Each party irrevocably agrees that the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).