

IT IS HEREBY AGREED

Your attention is particularly drawn to the provisions of clause 11 (Limitation of liability).

1. ABOUT US

- 1.1 **Company details.** The Publishing Foundry Limited (company number 04712375) (**Tiny Tracker** or **us**) is a company registered in England and Wales and our registered office is at Unit 26, Priory Tec Park, Saxon Way, Hessle, HU13 9PB which is our main trading address. Our VAT number is GB 192 5871 73. Tiny Tracker operate the website tinytracker.co.uk (**Tiny Tracker Website**).
- 1.2 **Contacting us.** To contact us, telephone our customer service team on 0300 012 0001 or email us at info@tinytracker.co.uk. How to give us formal notice of any matter under the Contract is set out in clause 16.2.

2. OUR CONTRACT WITH YOU

- 2.1 **Our contract.** These terms and conditions (**Terms**) apply to the registration by you and supply of Services by us to you (**Contract**). They apply to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.2 **Additional Terms:** In addition to the Terms, your use of the Services will be subject to the Tiny Tracker Privacy Policy, Tiny Tracker Website Usage Policy, the Tiny Tracker Website Acceptable Use Policy, the Tiny Tracker GDPR Policy, the Tiny Tracker Customer Complaints Policy, each as amended from time to time and any other policy notified by us to you from time to time (**Tiny Tracker Usage Policies**).
- 2.3 **Entire agreement.** The Contract is the entire agreement between you and us in relation to its subject matter. You acknowledge that you have not relied on any statement, promise or representation or assurance or warranty that is not set out in the Contract.
- 2.4 **Language.** These Terms and the Contract are made only in the English language.
- 2.5 **Your copy.** You should print off a copy of these Terms or save them to your computer for future reference.

3. REGISTERING FOR SERVICES

- 3.1 **Registering for the Services.** Please follow the onscreen prompts to register for the Services. You may only register for the services using the method set out on the site which will include creating your own account on the Tiny Tracker Website (**Your Account**). Registration by you for the services is an offer by you to buy the services (**Services**) subject to these Terms.
- 3.2 **Correcting input errors.** Our registration process allows you to check and amend any errors before submitting your registration for Services. Please check the registration carefully before confirming it. You are responsible for ensuring that your registration for the Services is complete and accurate.

- 3.3 **Accepting your registration.** Our acceptance of your registration takes place when Tiny Tracker send an email to you confirming acceptance, at which point and on which date (**Commencement Date**) the Contract between you and us will come into existence.
- 3.4 **Duration of the Contract.** The Contract shall commence on the Commencement Date and shall continue until:
- 3.4.1 terminated by us at any time by not less than 30 days written notice to you;
 - 3.4.2 terminated by us in accordance with clause **Error! Reference source not found.** (Termination); or
 - 3.4.3 terminated by you at any time by not less than 1 business days written notice to us prior to the to the end of a month, such notice to expire at the end of such month. Such notice may be given by you by clicking on one of the cancellation of Service options within Your Account.
- 3.5 **If Tiny Tracker cannot accept your registration.** If Tiny Tracker are unable to supply you with the Services for any reason, Tiny Tracker will inform you of this by email and Tiny Tracker will not process your registration. If you have already paid for the Services but not used the Services, Tiny Tracker will refund you the full amount paid.

4. OUR SERVICES

- 4.1 **Descriptions and illustrations.** Any descriptions or illustrations of the Services on the Tiny Tracker Website are published for the sole purpose of giving an approximate idea of the services described in them. They will not form part of the Contract or have any contractual force.
- 4.2 **Compliance with specification.** Subject to our right to amend the specification (see clause 4.3) Tiny Tracker will supply the Services to you in accordance with the specification for the Services appearing on the Tiny Tracker Website at the date of your registration for the Services, in all material respects.
- 4.3 **Changes to specification.** Tiny Tracker reserve the right to amend the specification of the Services if required by any applicable statutory or regulatory requirement or if the amendment will not materially affect the nature or quality of the Services, and Tiny Tracker will use its reasonable endeavours to notify you following any such amendment (such notice may be by way on notice on the Tiny Tracker Website).
- 4.4 **Reasonable care and skill.** Tiny Tracker warrant to you that the Services will be provided using reasonable care and skill.
- 4.5 **Access to Tiny Tracker Website and Services.** You will access the Services via the Tiny Tracker Website. Your access will be subject to these Terms and the Tiny Tracker Usage Policies, including without limitation, the Tiny Tracker Website Usage Policy and the Tiny Tracker Website Acceptable Use Policy. In particular, Tiny Tracker do not guarantee that the Tiny Tracker Website, or any content on it, or the Services, will always be available or be uninterrupted. Tiny Tracker may suspend or withdraw or restrict the availability of all or any part of the site or Services for business and/or operational reasons. Tiny Tracker will try to give you reasonable notice of any suspension or withdrawal. Tiny Tracker reserves the right to suspend the Services, restrict or prevent access to Your Account and/or remove data from Your Account in circumstances where any of these Terms or any terms of the

Tiny Tracker Usage Policies have been breached or it considers (acting reasonably) appropriate to do so.

4.6 **Changes to the Services by you.** You may amend the pupil number you have registered for in respect of the Services from Your Account provided that such amendments may not be made more than once each month.

4.7 **Jurisdiction.** The Services are designed for use by education establishments located in the United Kingdom. We do not represent that the Services are appropriate for use in other locations and use of the Services outside the United Kingdom shall be your responsibility.

5. YOUR OBLIGATIONS

5.1 It is your responsibility to ensure that:

5.1.1 the terms of your registration are complete and accurate;

5.1.2 you upload and maintain data relevant to your pupils (**Your Data**) via Your Account;

5.1.3 you cooperate with us in all matters relating to the Services;

5.1.4 you keep your registration and Your Account details (including any login details, passwords etc) safe and treat such information as confidential;

5.1.5 you only allow such of your employees to access Your Account as are reasonably required. You may allow access to Your Account (or part of Your Account) to parents or guardians of your pupils provided that you shall be responsible for any breach of the Terms by such parents;

5.1.6 all persons who access Your Account are aware of these Terms and the Tiny Tracker Usage Policies, and that they comply with them. You shall be responsible for any breach by such person;

5.1.7 you comply with all the Tiny Tracker Usage Policies;

5.1.8 you provide us with such information Tiny Tracker may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;

5.1.9 you obtain and maintain all necessary licences, permissions and consents which may be required for the delivery, and use by you, of the Services before the date on which the Services are to start;

5.1.10 you comply with all applicable laws, including health and safety laws, data protection laws and safeguarding laws.;

5.2 Your will not:

5.2.1 share or allow access to Your Account with any person not expressly permitted by these Terms; or

5.2.2 copy, adapt, reverse engineer, decompile, disassemble, modify or adapt or attempt to do any of the same, in respect of the Tiny Tracker Website or any related software, in whole or in part, or permit or assist any third party to do the same.

5.3 If you fail to fulfil any of your responsibilities set out in clause 5.1 or are otherwise expressed to responsible for a breach by any other party, or breach any provisions of clause 5.2 (**Your Default**):

5.3.1 Tiny Tracker will be entitled to suspend performance of the Services and/or your access to Your Account until you remedy Your Default, and to rely on Your Default to relieve us from the performance of the Services, in each case to the extent Your Default prevents or delays performance of the Services. In certain circumstances Your Default may entitle us to terminate the Contract under clause 13 (Termination);

5.3.2 Tiny Tracker will not be responsible for any costs or losses you sustain or incur arising directly or indirectly from our failure or delay to perform the Services; and

5.3.3 you shall indemnify us in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by us or our agents, subcontractors, consultants or licensors arising out of or in connection with the same (including arising out of any breach by such other party).

6. MONTHLY SUBSCRIPTION CHARGE

6.1 In consideration of us providing the Services you must pay a monthly subscription charge (**Monthly Subscription Charge**) in accordance with this clause 6.

6.2 The Monthly Subscription Charge shall be the charge stated on the Tiny Tracker Website for the pupil number category you registered for in respect of the Services. If you amend the pupil number category in accordance with clause 4.6, the Monthly Subscription Charge will change as stated on the Tiny Tracker Website at the time you make the amendment.

6.3 Tiny Tracker reserve the right to increase the Monthly Subscription Charge at any time by not less than 14 days written notice to you.

6.4 Our Monthly Subscription Charge is exclusive of VAT. Where VAT is payable in respect of some or all of the Services you must pay us such additional amounts in respect of VAT, at the applicable rate, at the same time as you pay the Monthly Subscription Charge.

7. HOW TO PAY

7.1 Payment of the Monthly Subscription Charge is in advance prior to the month in respect of which the Services are to be provided.

7.2 Tiny Tracker will take your first payment upon acceptance of your registration and will take subsequent payments monthly in advance.

7.3 You can pay for the Services by direct debit or using a debit card or credit card. Tiny Tracker accept the following cards:

Visa Debit or Credit

Mastercard Debit or Credit

- 7.4 You authorise Tiny Tracker to retain your payment information, including all submitted direct debit and debit and credit card information, and to process payment of the Monthly Subscription Charge each month using the established payment method and the information you have provided that is stored in Your Account as at the applicable due date for payment.
- 7.5 Tiny Tracker will send you an electronic invoice within seven days of the beginning of the month following payment. For any failed or cancelled payments, a £20 administration fee will be levied. If any payment made by you results in a card chargeback, you agree to indemnify Tiny Tracker in respect of all costs incurred by Tiny Tracker in connection with such chargeback.
- 7.6 If you fail to make a payment under the Contract by the due date, then, without limiting our remedies under clause 13 (Termination), you will have to pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 7.7 You shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

8. COMPLAINTS

If a problem arises or you are dissatisfied with the Services, Tiny Tracker have a comprehensive complaints policy, see our website.

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1 All intellectual property rights in respect of the Tiny Tracker Website or in or arising out of or in connection with the Services (other than intellectual property rights in Your Data) will be owned by us.
- 9.2 Tiny Tracker agree to grant you a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to print the reports available from the Services (excluding materials provided you) for the purpose of receiving and using the Services and such reports in your business. You may not sub-license, assign or otherwise transfer the rights granted in this clause 9.2.
- 9.3 You agree to grant us a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by you to us for the term of the Contract for the purpose of providing the Services to you.
- 9.4 You:
- 9.4.1 represent and warrant that:
- (a) you are authorised and have all permissions necessary to upload Your Data to Your Account and use the Services in respect of such;

- (b) the uploading and use of Your Data in the performance of the Contract by us, our agents, subcontractors, licensors or consultants shall not:
 - (i) breach any applicable laws (including local laws); or
 - (ii) infringe the rights, including any intellectual property rights, of any third party; and
- (c) Your Data complies with all applicable laws (including local laws),

9.4.2 shall indemnify us in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by us or our agents, subcontractors, consultants or licensors arising out of or in connection with any breach by you of any provision of clause 9.4.1.

9.5 This clause 9 will survive termination of the Contract.

10. HOW TINY TRACKER MAY USE YOUR PERSONAL INFORMATION

10.1 Tiny Tracker will use any personal information you provide to us to:

10.1.1 provide the Services;

10.1.2 process your payment for the Services; and

10.1.3 inform you about similar products or services that Tiny Tracker provide, but you may stop receiving these at any time by contacting us.

10.2 Tiny Tracker will process your personal information in accordance with our Privacy Policy, the terms of which are incorporated into this Contract.

11. LIMITATION OF LIABILITY: YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

11.1 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

11.1.1 death or personal injury caused by negligence;

11.1.2 fraud or fraudulent misrepresentation; and

11.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

11.2 Subject to clause 11.1, Tiny Tracker will not be liable to you, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

11.2.1 loss of profits;

11.2.2 loss of sales or business;

- 11.2.3 loss of agreements or contracts;
 - 11.2.4 loss of anticipated savings;
 - 11.2.5 loss of use or corruption of software, data or information;
 - 11.2.6 loss of or damage to goodwill; and
 - 11.2.7 any indirect or consequential loss.
- 11.3 Subject to clause 11.1, Tiny Tracker's total liability to you arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, will be limited in each 12 month period of the Contract to the amount of the Monthly Subscription Charge paid by you to us in respect of such 12 month period.
- 11.4 Tiny Tracker have given commitments as to compliance of the Services with the relevant specification in clause 4.2. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 11.5 Unless you notify us that you intend to make a claim in respect of an event within the notice period, Tiny Tracker shall have no liability for that event. The notice period for an event shall start on the day on which you became, or ought reasonably to have become, aware of the event having occurred and shall expire 12 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 11.6 Nothing in these Terms limits or affects the exclusions and limitations set out in our Terms and Conditions of Website Usage Policy
- 11.7 This clause 11 will survive termination of the Contract.

12. CONFIDENTIALITY

- 12.1 You and Tiny Tracker each undertake that you and Tiny Tracker will not at any time (including after termination of the Contract) disclose to any person any confidential information concerning one another's business, affairs, customers, clients or suppliers, except as permitted by clause 12.2.
- 12.2 Tiny Tracker each may disclose your confidential information:
- 12.2.1 to such of our respective employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of exercising our rights or carrying out our obligations under the Contract. Tiny Tracker ensure that such employees, officers, representatives, subcontractors or advisers comply with this clause 12; and
 - 12.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.3 Each of us may only use the other's confidential information for the purpose of fulfilling our respective obligations under the Contract.

13. TERMINATION, CONSEQUENCES OF TERMINATION AND SURVIVAL

13.1 **Termination.** Without limiting any of our other rights, Tiny Tracker may suspend the performance of the Services, or terminate the Contract with immediate effect by giving written notice to you if:

13.1.1 you commit a material breach of any term of the Contract and (if such a breach is remediable) fail to remedy that breach within 7 days of you being notified in writing to do so;

13.1.2 you fail to pay any amount due under the Contract on the due date for payment;

13.1.3 you commit a material breach of any term of the Tiny Tracker Usage Terms and (if such a breach is remediable) fail to remedy that breach within 7 days of you being notified in writing to do so;

13.1.4 you take any step or action in connection with you entering administration, provisional liquidation or any composition or arrangement with your creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of your assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

13.1.5 you suspend, threaten to suspend, cease or threaten to cease to carry on all or a substantial part of your business;

13.1.6 your financial position deteriorates to such an extent that in our opinion your capability to adequately fulfil your obligations under the Contract has been placed in jeopardy;

13.1.7 you (being an individual) die or are declared bankrupt;

13.2 Consequences of termination

13.2.1 On termination of the Contract:

(a) Your Account will be suspended and your access to Your Account terminated;
and

(b) you must return all of our materials and any deliverables which have not been fully paid for and you must not use any materials or deliverables for any purpose unconnected with the Contract.

13.2.2 Termination of the Contract will not affect your or our rights and remedies that have accrued as at termination.

13.3 **Survival.** Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination will remain in full force and effect.

14. EVENTS OUTSIDE OUR CONTROL

- 14.1 Tiny Tracker will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under the Contract that is caused by any act or event beyond our reasonable control (**Event Outside Our Control**).
- 14.2 If an Event Outside Our Control takes place that affects the performance of our obligations under the Contract:
- 14.2.1 Tiny Tracker will contact you as soon as reasonably possible to notify you; and
- 14.2.2 our obligations under the Contract will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control. Tiny Tracker will arrange a new date for performance of the Services with you after the Event Outside Our Control is over.
- 14.3 You may cancel the Contract affected by an Event Outside Our Control which has continued for more than 30 days. If you opt to cancel Tiny Tracker will refund any Monthly Subscription Charge you have paid (less the charges reasonably and actually incurred us by in performing the Services) in relation to the period from the date of the occurrence of the Event Outside Our Control to your termination.

15. NON-SOLICITATION

You must not attempt to procure services that are competitive with the Services from any of our directors, employees or consultants, whether as an employee or on a freelance basis, during the period that Tiny Tracker are providing the Services to you and for a period of 12 months following termination of the Contract.

16. COMMUNICATIONS BETWEEN YOU AND TINY TRACKER

- 16.1 When Tiny Tracker refer to "in writing" in these Terms, this includes email.
- 16.2 Any notice or other communication given by one of us to the other under or in connection with the Contract must be in writing and be delivered personally, sent by pre-paid first class post or other next working day delivery service, or email.
- 16.3 A notice or other communication is deemed to have been received:
- 16.3.1 if delivered personally, on signature of a delivery receipt or at the time the notice is left at the proper address;
- 16.3.2 if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second working day after posting; or
- 16.3.3 if sent by email, at 9.00 am the next working day after transmission.
- 16.4 In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an email, that such email was sent to the specified email address of the addressee.
- 16.5 The provisions of this clause will not apply to the service of any proceedings or other documents in any legal action.

17. GENERAL

17.1 Assignment and transfer

17.1.1 Tiny Tracker may assign or transfer our rights and obligations under the Contract to another entity but will always notify you in writing or by posting on the Tiny Tracker Website if this happens.

17.1.2 You may not assign or transfer your rights or your obligations under the Contract to another person.

17.2 **Variation.** Tiny Tracker may vary the Contract at any time by giving you not less than 30 days written notice of such variation. If you continue to use the Services following any such variation you will be deemed to have accepted such variation.

17.3 **Waiver.** If Tiny Tracker do not insist that you perform any of your obligations under the Contract, or if Tiny Tracker do not enforce our rights against you, or if Tiny Tracker delay in doing so, that will not mean that Tiny Tracker have waived our rights against you or that you do not have to comply with those obligations. If Tiny Tracker do waive any rights, Tiny Tracker will only do so in writing, and that will not mean that Tiny Tracker will automatically waive any right related to any later default by you.

17.4 Severance.

17.4.1 Each paragraph of these Terms operates separately. If any court or relevant authority decides that any of them is unlawful or unenforceable, the remaining paragraphs will remain in full force and effect.

17.4.2 If any paragraph is deemed unlawful or unenforceable under clause 17.4.1, Tiny Tracker each shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

17.5 **Third party rights.** The Contract is between you and Tiny Tracker. No other person has any rights to enforce any of its terms.

Governing law and jurisdiction. The Contract is governed by English law and, subject as provided below, you and Tiny Tracker each irrevocably agree to submit all disputes arising out of or in connection with the Contract to the exclusive jurisdiction of the English courts. Nothing in this clause shall limit the right of Tiny Tracker to take proceedings against you in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.