

SCHEDULE 2.6 – SERVICE USERS

ANNEX 1 - SERVICE USER SERVICE AGREEMENT

The purpose of this document is to detail the agreement that exists between **the Norfolk County Council**, acting as the Supplier, and the Service User which is the educational establishment including students, teachers, governors, parents and other users which may be authorised by the Educational Establishment for educational purposes.

The Norfolk County Council, has entered into a contract ("the Contract") with Fronter UK Ltd, acting as the Contractor for the supply of the Fronter Open Learning Platform. This Service User Agreement reflects elements of that contract as well as detailing the requirements of the Service User, the processes for obtaining the service, and license clauses.

This Service User Agreement is entered into by the following Service User:

Educational Establishment DCFS number:		Number of students:	
Educational Establishment Name:		Number of staff:	
Educational Establishment Phone:			
Educational Establishment Address:			

And the Supplier, the Norfolk County Council,:

For the following Service:

The Fronter Open Learning Platform Service

Which consists of the following Software:

Fronter Open Learning Platform

The Start Date of the Service User Agreement is:

The First Fixed Term is from the Start Date until: *[insert contract end date]*

Subsequent Fixed Terms shall run by subsequent agreement

At the time when this Service User Agreement is entered into;

The Annual Service Charge's will be paid directly by the Supplier to Fronter UK Limited

I agree to the terms and conditions of this Service User Agreement:

Name of Signatory:	Role:	Signature Date:	Signature:

The standard terms and conditions laid out on the following pages along with this signed page jointly constitute the Service User Agreement, and is binding for all parties. The Service User Agreement is signed in three originals, one for the Service User, one for **the Supplier**, and one for Fronter UK Ltd.

1 Parties and Contents

- 1.1 The Service User and Supplier are named on the front page of this Service User Agreement, individually referred to as the Service User and the Supplier, and collectively referred to as the Parties.
- 1.2 The Service User Agreement includes the Services, including the Software, ordered by the Service User and all additional orders made by the Supplier on behalf of the Service User.

2 Duration and Fixed Term

- 2.1 The Service User Agreement may not be terminated prior to the completion of the First Fixed Term save that either party may terminate the Service User Agreement in accordance with article 3.
- 2.2 If the Service User Agreement has not been terminated in accordance with article 3, the Service User Agreement is automatically renewed for subsequent Fixed Terms.
- 2.3 The Service User may not give notice of termination within a Fixed Term except in accordance with article 3

3 Notice of termination

- 3.1 Each party may terminate the Service User Agreement by giving written notice. Such notice must be given no later than 7 months before the expiry of the First Fixed Term or any subsequent Fixed Terms. This Service User Agreement will also terminate when the Service User leaves the Contract pursuant to a change request made by the Supplier under the Change Control Procedure in the Contract
- 3.2 When the Service User Agreement is terminated and the First Fixed Term or any subsequent Fixed Terms has expired, the Service User may no longer use the Service or Software delivered under the Service User Agreement.
- 3.3 In cases of default the Supplier may choose to stop the Services under the Service User Agreement until the Service User supplies the correct payment.

4 Requirements of the Service User

- 4.1 The Service User is required to already have in place the following documents and the underlying procedures:
 - An Acceptable Use Policy – AUP
 - A Terms of Use Policy – ToU
 - Educational Establishments are expected to have complied with DCFS and Local Authority Fair Processing regulations.
- 4.2 Copies of **the Supplier's** Acceptable Use Policy and Terms of Use are available upon request. By entering into this Service User Agreement the Service User has agreed to the terms and conditions in these documents.
- 4.3 The Service User is required to agree to:
 - Populate the Service User check list, including the timetable for deployment within the Educational Establishment;
 - Make available suitable staff to facilitate the deployment within the Educational Establishment;
 - Nominate staff as the Champion User and Local Administrator as the key contacts and provide their names and contact details.
 - Participate in any Continuing Professional Development training packages which are included in the Base Service and to supply suitable staff to receive training;
 - Use the provided Service Desk facilities only for the agreed purposes;
 - Use the Service in a way consistent with this Service User Agreement; and
- 4.4 The Service User is required to comply with any reasonable instructions given to it by or reasonable requests made of it by the Supplier, which assist in the provision or and operation of the Service, Any such request or instruction must be complied with within any timescale given by the Supplier,

5 Obtaining Service and Price

- 5.1 The Supplier will publish a Catalogue of Base Services and Additional Services.
- 5.2 The Additional Services, if required, are laid out in the Catalogue and accompanying Service Description that itemise the services and the method by which they are charged. A Service User may at any time request an additional service. Request for additional service should be made in accordance to paragraph 14.
- 5.3 A Service User may cease to use an additional service subject to the period of notice specified for that additional service. The balance of payments, if any, will still be payable for the period of notice even if the Service User does not take the Service.

- 5.4 Costs charged by MIS providers for exchange of data, additional licences or services in order to achieve export of Service User data to an MIS system are not included in this Service User Agreement and must be covered by the Service User.
- 5.5 The Service User agrees to reimburse the Supplier, upon demand, for any additional costs, charges, expenses or other liabilities, the Supplier incurs as a result of the Service User requesting additional goods or services under this Service User Agreement.

6 Price and conditions of payment

- 6.1 The Annual Service Charges will be paid initially by the Supplier from the respective budget the Supplier holds on behalf of the Service User.
- 6.2 The first Annual Service Charge is invoiced on the 28 March 2009
- 6.3 Subsequent Annual Service Charges are invoiced annually in advance. For all subsequent years the Annual Service Charge is invoiced at the beginning of each new Fixed Term.
- 6.4 All prices are exclusive of VAT, and the Service User shall pay VAT in addition if the Law requires this.
- 6.6 The Service User shall pay the invoice within 30 days from date of invoice. If payment is not made within the 30-day period, the Supplier is entitled to reclaim from the Service User any interest it is required to pay to Fronter UK Limited.

7 Licence and use

- 7.1 To the extent that the Supplier is lawfully able to do so in accordance with the Contract the Supplier grants the Service User a non-exclusive, revocable right to use the Service and Software in accordance with the terms and conditions of this Service User Agreement.
- 7.2 When this Service User Agreement is terminated, the Service User shall forego its right to use the Service and Software (including any associated documentation). At the same time, the Supplier's obligations related to the Service in this Service User Agreement shall cease to exist, unless expressly agreed in writing by the Parties.
- 7.3 All upgrades of the Software are included, at no extra charge, unless the Service User is advised otherwise by the Supplier, during the term of the Service User Agreement. Upon request by the Supplier the Service User must accept, within a reasonable period of time not to exceed 30 days, any upgrade to the Software. Failure to comply with this obligation will result in a reduced level of Service.
- 7.4 The Service User shall not modify or remove any copyright or proprietary notices on the Software.
- 7.5 The Service User shall not decompile, reverse engineer, disassemble or otherwise reduce any part of the Software to human-readable form nor permit any third party to do so.
- 7.6 Save as otherwise provided, the Service User shall not, and shall not permit any third party to copy, make error corrections to or otherwise modify or adapt the Software nor to create derivative works based upon the Software.
- 7.7 Save as otherwise provided, the Service User shall not provide access to the Software or issue licences of the Software to any third party without prior written permission from the Supplier.
- 7.8 The Service User shall implement and maintain adequate measures to safeguard the Software from access or use by any unauthorised person not belonging to the Service User's user base and shall further indemnify the Supplier from any claim arising as a result of its breach of this clause including as may arise under the Data Protection Act 1998 or any related data protection legislation. The Supplier reserves the right to audit the user base and safeguard measures. Failure to comply with any such request may result in the Service being suspended indefinitely or terminated.
- 7.9 The Service User shall comply with all reasonable instructions of the Supplier with regard to the use of the Software, including without limit, the implementation of upgrades to the Software, specified operating system, computer hardware, network configurations or otherwise which the Supplier may provide from time to time.
- 7.10 The Service User shall indemnify the Supplier from any consequences of using third party products with the Software and the Supplier takes no responsibility for the performance of the Software as a result of any third party products used with the Software.

8 Warranty & Indemnity

- 8.1 To extent that that Fronter UK Limited warrants these matters to the Supplier upon the terms of the Contract the Supplier warrants that it has the right to grant the Service User the right to use of the Software as provided in this Service User Agreement, and that upgrades, bug fixes, and modifications will be carried out with reasonable care and skill appropriate to the Software being provided.
- 8.2 The Supplier does not warrant that the Software will be uninterrupted or error free.

- 8.3 The Service User can request the Supplier to repair or replace (Suppliers option) any defective code in the Software within a reasonable time . The Service User shall provide all information as may be reasonably necessary to assist the Supplier in resolving any defective code in the Software including sufficient information to enable the Supplier to re-create the defect.
- 8.4 The warranties shall not apply to the extent that:
- the Software is used in combination with any software or materials not preapproved by Fronter UK Limited;
 - the Software is used otherwise than as permitted under this Service User Agreement;
- 8.5 The Supplier does not warrant that any of the following incidents may not occur as a consequence of the supply or use of the Software, provided that such incident is not caused by negligence from the Supplier: loss of data, data or Service unavailable, data made available for unauthorised users, malfunction in application or hosting environment, virus attack, hosting environment unavailable or unauthorised break-in (hacking).
- 8.6 The Service User shall indemnify the Supplier against any reasonable claim any user or other third party may have against the Supplier resulting from how the Service User is utilising the Software and Service.
- 8.7 The Supplier (including any liability for the acts or omissions of its employees or advisers) shall not be liable for any expenses, costs, loss of profit, loss of goodwill, loss of reputation, loss of contract, loss of business or any indirect or consequential loss, howsoever caused, incurred by or alleged to have been incurred by the Service User, which may arise out of or in connection with this Service User Agreement. This clause does not apply in respect of death or personal injury caused as a result of the negligence of the Supplier or in the event of any fraudulent misrepresentations made by the Supplier. The Service User acknowledges that any and all copyright and any other intellectual property rights (including, without limitation, (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs; (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and (c) all other rights having equivalent or similar effect in any country or jurisdiction) which subsist in or arise in connection with the Software whether prior to or during the term of this Service User Agreement anywhere in the world belong to the Supplier (or its licensors, if any)
- 8.8 The Service User indemnifies the Supplier in respect of any costs, claims, damages, expenses or any other loss sustained by the Supplier resulting from the provision of the Service and/or the Software to the Service User.
- 9 Support, Training and Hosting**
- 9.1 The Service User is responsible for direct support to its own users (first line support). The Service User's defined Local Administrator and Champion User have access to the ICT Services Desk and (as agreed between the Supplier and the Service User and in accordance with the terms of the Contract) the Fronter UK Limited support service (second line support) on working days between the hours 0800 and 1700 UK time.
- 9.2 Training and Support for users other than Service User's Local Administrator and Champion Users will be given where deemed appropriate by the Supplier and on terms set down by the Supplier. Additional charges may apply as a result.
- 9.3 The Supplier is providing a hosted Service for the Service User. Availability and response targets are as set in the SLA within the Contract

10 Confidentiality

- 10.1 The Supplier or any other person, who on the Supplier's behalf gains information about the Service User's business, business contacts, personal contact information and details, educational and assessment records and materials, personnel records, or computer material marked as confidential, has a duty to not disclose such information to third parties without the Service User's permission. The Service User shall keep all information confidential which is given to it by the Supplier or gained by the Service User, provided the Service User understands or should understand that such information is confidential.
- 10.2 Supplier may use the Service User as a reference in the marketing of their products and business.

11 Breach of the Service User Agreement

- 11.1 Any party who wishes to cite a breach of the Service User Agreement must do so without undue delay after the party first gained or should have gained information of the alleged breach.

- 11.2 The Service User is obliged to examine the Software and other products without undue delay after delivery, and at the latest 4 weeks from the 27 April 2009.
- 11.3 If the Service User has failed to give notice within the 4 week period, the Service User forgoes the right to demand remedy for any fault or defect to the Software or Services delivered that ought to have been discovered at the time of delivery.

12 Disputes

- 12.1 Disputes arising out of this Service User Agreement shall be settled by an escalation process. The Service User will notify the Supplier of the dispute and the parties will attempt to negotiate a resolution in good faith. If a resolution cannot be negotiated between the parties the matter will be referred to the Headteacher of the Service User and the Head of ICT Solutions for the Supplier.
- 12.2 This Service User Agreement is governed by English law.

13 Force majeure

- 13.1 Neither party is liable for any breach of their obligations under this Service User Agreement caused by force majeure. Force majeure is defined as any cause affecting the performance by a party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Supplier, the Supplier's personnel, Fronter UK Limited or any other failure in the Supplier or their supply chain. In a force majeure situation, the obligations under this Service User Agreement to which the force majeure situation applies, are suspended for as long as the situations continues. The corresponding obligations for the other Party are suspended for the same period.

14 Additional Service

- 14.1 Additional Services under the Service User Agreement must be requested in writing to the Supplier by the Signatory or a representative duly authorised by the Signatory to order additional services. The Supplier will (at its discretion) order any Additional Services requested by the Service User from Fronter UK Limited
- 14.2 All orders for additional services will be treated as a part of this Service User Agreement.
- 14.3 All orders for additional services are effective from the time Supplier confirms the order, and are thereafter a part of this Service User Agreement. The new Service will become available within the lead time shown in the Catalogue Costs relating to the Additional Services will be calculated and invoiced from the first day in the month following the month the order was placed.

15 Novation of Service User Agreement

- 15.1 When the contract between Fronter UK Limited and the Supplier expires, the Supplier shall have the option, to novate and transfer this Service User Agreement with the Service User from the Supplier to Fronter UK Limited, which means that the Supplier's role is transferred to Fronter with effect from the said date and Fronter UK Limited will then assume all obligations, duties, tasks and rights of the Supplier under this Service User Agreement