

DATED

06 SEPTEMBER 2024

SOURCE CODE LICENCE AGREEMENT

between

RM EDUCATION LIMITED

and

DEPARTMENT FOR EDUCATION

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This licence agreement is dated **06 SEPTEMBER 2024**

Parties

- (1) **RM EDUCATION LIMITED** incorporated and registered in England and Wales with company number 1148594 whose registered office is at 142B Park Drive, Milton Park, Abingdon, Oxon, OX14 4SE ("**Supplier**"); and
- (2) **THE SECRETARY OF STATE FOR EDUCATION** whose Head Office is at Sanctuary Buildings, 20 Great Smith Street, Westminster, London, SW1P 3BT ("**Customer**").

BACKGROUND

- (A) The Supplier is the legal and beneficial owner of certain Intellectual Property Rights subsisting in the Source Code for the software listed in Schedule 1 and is willing to license the Customer to use such Intellectual Property Rights in accordance with the terms of this licence.

Agreed terms

1. Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

Business Hours: the period from 9.00 am to 5.00 pm on any Business Day;

Control: a business entity shall be deemed to "control" another business entity if it owns, directly or indirectly, in excess of 50% of the outstanding voting securities or capital stock of such business entity, or any other comparable equity or ownership interest with respect to a business entity other than a corporation OR as defined in section 1124 of the Corporation Tax Act 2010;

Fee: the licence fee payable by the Customer to the Supplier under clause 4;

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and rights in domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other

intellectual property rights, including all applications for (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;

NPDAAT Contract: the agreement titled National Pupil Data Achievement and Attainment Tables (NPDAAT) Service made between Department for Education and RM Education Ltd, dated 24th January 2020, bearing the reference number Project 824, under Digital Outcomes and Specialists Framework Agreement (RM1043.5);

Purpose: Producing the key stage 4 achievement and attainment data outputs as specified in the NPDAAT Contract and used by the Customer to underpin their national statistics publications and public and sector facing digital services such as Compare School and College Performance and Analyse School Performance.

Source Code: with respect to each computer software program listed in Schedule 1, the computer programs or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent object code, and all documentation respect of such programs including such documentation referenced in schedule 1; and

Third-Party Software: any third-party software and/or source code that may be required to utilise the Source Code.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 Unless the context otherwise requires:
 - (a) words in the singular shall include the plural and in the plural shall include the singular;
 - (b) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time; and
 - (c) any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.4 In the case of conflict or ambiguity between any provision contained in the body of this agreement and any provision contained in the schedules or appendices, the provision in the body of this agreement shall take precedence.

1.5 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.

1.6 A reference to writing or written excludes fax but not email.

2. Delivery and Acceptance

2.1 The Supplier shall deliver one copy of the Source Code electronically to the Customer at the address for the Customer (stated above) or at such other address or in such other manner as may be agreed between the parties within five (5) days of signature of this agreement.

2.2 For a period of ten (10) Business Days commencing on the first Business Day following delivery of the Source Code, and receipt of such by the Customer, the Customer may test the Source Code to determine whether it is complete (to the extent described in the Background of this Agreement (above)) and provides the same or equivalent functionality to the source code deployed by the Supplier for the Purpose in fulfilment of its obligations under the NPDAAT Contract ("**Initial Test Period**").

2.3 During the Initial Test Period the Customer may reject the Source Code if it is incomplete (taking into account the Background of this Agreement (above)) or does not provide the same or equivalent functionality to the source code deployed by the Supplier for the Purpose in fulfilment of its obligations under the NPDAAT Contract. Following such rejection the Supplier shall within ten (10) Business Days correct the Source Code to the extent that it is reasonably able to do so and deliver to the Customer the updated Source Code.

2.4 For a period of ten (10) Business Days commencing on delivery of the updated Source Code provided pursuant to clause 2.3, the Customer may test the Source Code to determine whether it is complete and provides the same or equivalent functionality to the source code deployed by the Supplier for the Purpose in fulfilment of its obligations under the NPDAAT Contract ("**Further Test Period**").

2.5 During the Initial Test Period or the Further Test Period, the Customer may discontinue this licence of the Source Code if it is incomplete (taking into account the Background of this Agreement (above)) or does not provide the same or equivalent functionality to the source code deployed by the Supplier for the Purpose in fulfilment of its obligations under the NPDAAT Contract. If the Customer does so, the Supplier shall immediately

refund all monies paid by the Customer under this agreement and, on receipt of that refund, this agreement shall terminate.

- 2.6 Risk in any tangible media on which the Source Code is delivered shall not pass to the Customer until the expiry of the Initial Test Period or the Further Test Period as applicable (unless the Customer has discontinued this agreement beforehand and in such circumstances risk in the Source Code shall not pass).
- 2.7 In the event that the Customer discontinues this licence of the Source Code pursuant to Clause 2.5 the Customer shall:
- (a) promptly erase all copies of the Source Code from its computer and communications systems and devices used by it or any third parties acting on behalf of the Customer; and
 - (b) certify in writing to the Supplier that it has complied with the requirements of this clause 2.7, and provide an undertaking that the knowledge of the Source Code and any know-how gained from the provision of the Source Code will not be exploited for any purpose.

3. Licence

- 3.1 In consideration of the Fees paid by the Customer to the Supplier, receipt of which the Supplier hereby acknowledges, the Supplier grants to the Customer a non-exclusive, assignable, worldwide, perpetual and irrevocable licence commencing on and including the date of this agreement:
- (a) to howsoever use the Source Code for any purpose;
 - (b) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt, develop, correct errors in, the Source Code in whole or in part; and
 - (c) to grant any third party a sub licence to use, copy, adapt, reverse engineer, decompile, disassemble, modify, adapt, develop, correct errors in, the Source Code in whole or in part.
- 3.2 In relation to scope of use:
- (a) the Customer or any third party acting on behalf of the Customer may make backup copies of the Source Code as may be necessary for its lawful use. The

Customer shall record the number and location of all copies of the Source Code and take reasonable steps to prevent unauthorised copying; and

(b) the Customer or any third party acting on behalf of the Customer may, pursuant to clause 3.1(b) and 3.1(c):

- (i) modify the Source Code, each change being a "**Modification**";
- (ii) create new source code based on or incorporating the Source Code, in whole or in part ("**New Source Code**"); or
- (iii) incorporate the Source Code, in whole or in part, into any software or source code, or use the Source Code in conjunction with any software or source code ("**Combined Source Code**").

3.3 Any Third-Party Software required to utilise the Source Code for the purposes of this licence (except where expressly provided to the contrary) shall be the responsibility of the Customer and the use of any Third-Party Software shall be subject to the terms agreed between the Customer and the applicable third party.

3.4 The Customer may at any time sub-license assign, novate, charge, or deal in any other manner with any or all of its rights and obligations under this agreement on written notice to the Supplier.

3.5 The Customer shall not:

- (a) allow the Source Code to become the subject of any charge, lien or encumbrance; and
- (b) deal in any other manner with any or all of its rights and obligations under this agreement,

without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed.

3.6 The Supplier may at any time sub-license, assign, novate, charge or deal in any other manner with any or all of its rights and obligations under this licence, provided it gives a minimum of ninety (90) days written notice to the Customer before doing so.

3.7 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

3.8 Notwithstanding clause 5, a party assigning any or all of its rights under this agreement may disclose to a proposed assignee any information in its possession that relates to this agreement or its subject matter, the negotiations relating to it and the other party which is necessary to disclose for the purposes of the proposed assignment, provided that no disclosure pursuant to this clause 3.8 shall be made until notice of the identity of the proposed assignee has been given to the other party.

3.9 For the avoidance of doubt, this agreement and the licence granted under this clause 3 shall endure and be binding on the incoming third party in the event of a change in Control of the Supplier or in the event of assignment or novation pursuant to clause 3.6.

4. Fees

4.1 The Customer shall pay to the Supplier the licence Fees of [REDACTED]

4.2 Upon signature of this licence, the Supplier shall raise and deliver to the Customer an invoice for the Fees.

4.3 All Fees are stated exclusive of VAT. Should VAT be chargeable or due in connection with this licence agreement, RM shall be entitled to invoice the Customer for any such tax(es), which sums shall be paid by the Customer to RM in addition to the Fees quoted in clause 4.1.

4.4 If the Customer fails to make any payment due to the Supplier under this agreement within thirty (30) days from the date it receives a valid invoice from the Supplier pursuant to clause 4.2, then, without limiting the Supplier's remedies under clause 9, the Customer shall pay interest on the overdue amount at the rate of 4% 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.

5. Confidentiality and publicity

5.1 Each party undertakes that it shall not at any time, disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 5.2.

- 5.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 5; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 5.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.
- 5.4 No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

6. **Supplier's warranties**

- 6.1 The Supplier warrants that:
- (a) it has the right to enter into this agreement and to grant to the Customer a licence or sub-licence to use the Source Code as contemplated by this agreement;
 - (b) at each point the Source Code is delivered pursuant to clause 2, the Source Code and the media on which the Source Code is delivered are free from viruses and other malicious code;
 - (c) the media on which the Software is delivered under this agreement will be free from defects;
 - (d) the Source Code shall not contain Third Party Software; and
 - (e) it has not included or used any software licensed under the General Public Licence or any similar licence containing a "copyleft" requirement ("**Restrictive Open Source Code**") in, or in the development of, the Source Code, nor does the Source

Code operate in such a way that it is compiled with or linked to any Restrictive Open Source Code. Without prejudice to the foregoing, no open-source software (meeting the Open Source Initiative's open source definition from time to time) has been included or used in, or in the development of, any element of the Source Code in contravention of its applicable licence terms and no third party is asserting, or has in the last five (5) years asserted, any such contravention.

- 6.2 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality or fitness for purpose.

7. Limits of liability

- 7.1 Subject to clause 7.5, neither party shall in any circumstances have any liability for any losses or damages which may be suffered by the other (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:

- (i) special damage even if the Supplier was aware of the circumstances in which such special damage could arise;
- (ii) loss of profits;
- (iii) loss of anticipated savings;
- (iv) loss of business opportunity; and
- (v) loss of goodwill,

provided that this clause 7.1 shall not prevent claims for direct financial loss that are not excluded by any of categories (i) to (v) inclusive of this clause 7.1;

- 7.2 Subject to clause 7.5, and except for any liability arising under clause 8.4 (any such liability being unlimited), the total liability of the Supplier, whether in contract, tort (including negligence) or otherwise and whether in connection with this agreement or any collateral contract, shall in no circumstances exceed a sum equal to the Fee.

- 7.3 Subject to clause 7.5, the total liability of the Customer, whether in contract, tort (including negligence) or otherwise and whether in connection with this agreement or any collateral contract, shall in no circumstances exceed a sum equal to the Fee.
- 7.4 The Customer agrees that, in entering into this agreement, either it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this agreement or (if it did rely on any representations, whether written or oral, not expressly set out in this agreement) that it shall have no remedy in respect of such representations and (in either case) the Supplier shall have no liability in any circumstances otherwise than in accordance with the express terms of this agreement.
- 7.5 The exclusions set out in clause 7.1 shall apply to the fullest extent permissible at law, but neither party excludes any liability for:
- (a) death or personal injury caused by the negligence of its officers, employees, contractors or agents;
 - (b) fraud or fraudulent misrepresentation; and
 - (c) any other liability which may not be excluded by law.

8. Intellectual property rights

- 8.1 The Customer acknowledges that all Intellectual Property Rights in the Source Code belong and shall belong to the Supplier, and the Customer shall have no rights in or to the Source Code other than the rights granted to it under the terms of this agreement.
- 8.2 The Supplier acknowledges that all Intellectual Property Rights in any Modification or New Source Code or Combined Source Code belong and shall belong to the Customer, and the Supplier shall have no rights in or to any Modification or New Source Code or Combined Source Code.
- 8.3 To the extent that:
- (a) the Customer combines the Source Code with or incorporates the Source Code, in whole or in part, into any software or source code; or
 - (b) or uses the Source Code, in whole or in part, in conjunction with any software or source code,

the Supplier shall have no rights in or to any such software or source code.

- 8.4 The Supplier undertakes to defend the Customer from and against any claim or action that the possession, use, development, modification or maintenance of the Source Code in accordance with this agreement (or part thereof, but **excluding** any Modification or New Source Code or Combined Source Code) infringes the Intellectual Property Rights of a third party ("**Claim**"), and shall fully indemnify and hold harmless the Customer from and against any losses, damages, costs (including all legal fees) and expenses incurred by or awarded against the Customer as a result of, or in connection with, any such Claim.
- 8.5 If any third party makes a Claim or notifies an intention to make a Claim against the Customer, the Customer shall:
- (a) as soon as reasonably practicable, giving written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;
 - (b) not making any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier (such consent not to be unreasonably conditioned, withheld or delayed);
 - (c) giving the Supplier and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable the Supplier and its professional advisers to examine them and to take copies (at the Supplier's expense) for the purpose of assessing the Claim; and
 - (d) subject to the Supplier providing security to the Customer to the Customer's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, taking such action as the Supplier may reasonably request to avoid, dispute, compromise or defend the Claim.
- 8.6 If any Claim is made, or in the Supplier's reasonable opinion is likely to be made, against the Customer, the Supplier shall at its sole expense procure for the Customer the right to continue to use the Source Code (or any part thereof) in accordance with the terms of this agreement.

9. Termination

9.1 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under this agreement pursuant to clause 4.3 and remains in default not less than ten (10) days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (g) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
- (h) the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;

- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within fourteen (14) days;
- (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.1(c) to clause 9.1(j) (inclusive); or
- (l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

9.2 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.

9.3 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

9.4 Any provision of this agreement which expressly or by implication is intended to come into or continue in force on or after termination of this agreement including clause 1, clause 3, clause 5, clause 6, clause 7, clause 9 shall remain in full force and effect.

10. Waiver

10.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

10.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

11. Remedies

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

12. Entire agreement

- 12.1 This agreement and the schedule to this agreement or otherwise referred to herein contain the whole agreement between the parties relating to the subject matter hereof and supersede all previous and contemporaneous agreements, arrangements and understandings between them, whether written or oral, relating to that subject matter.
- 12.2 Each party acknowledges that, in entering into this agreement, it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to this agreement or not) ("**Representation**") other than as expressly set out in this agreement.
- 12.3 Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract.
- 12.4 Nothing in this clause shall limit or exclude any liability for fraud.

13. Variation

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

14. Severance

- 14.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
- 14.2 If any provision or part-provision of this agreement is deemed deleted under clause 14.1, the parties 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.

15. Counterparts

This agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

16. Third-party rights

A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

17. No partnership or agency

17.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

17.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

18. Notices

18.1 Any notice given to a party under or in connection with this contract shall be in writing and shall be:

(a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

(b) sent by email to the following addresses (or an address substituted in writing by the party to be served):

(i) Supplier: [REDACTED]

(ii) Customer: [REDACTED]

18.2 Any notice shall be deemed to have been received:

(a) if delivered by hand, at the time the notice is left at the proper address;

- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- (c) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

18.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall not include e-mail.

19. Expert Determination

19.1 Any technical dispute, including the functions or capabilities of the Source Code, shall be referred for final settlement to an expert agreed by the parties. Such expert shall be deemed to act as an expert and not as an arbitrator. The expert's decision shall, in the absence of manifest error, be final and binding on the parties.

19.2 The parties are entitled to make submissions to the expert and will provide (or procure that others provide) the expert with such assistance and documents as the expert reasonably requires for the purpose of reaching a decision.

19.3 Each party shall bear its own costs in relation to the reference to the expert. The expert's fees and any costs properly incurred by them in arriving at their determination (including any fees and costs of any advisers appointed by the expert) shall be borne by the parties equally or in such other proportions as the expert shall direct.

20. Governing law and jurisdiction

20.1 This agreement 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 law of England and Wales.

20.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This licence agreement has been entered into on the date stated at the beginning of it.

SIGNED for and on behalf of

RM EDUCATION LTD by

[NAME OF AUTHORISED PERSON]

.....
[Director]

SIGNED for and on behalf of

THE SECRETARY OF STATE FOR EDUCATION

by

[NAME OF AUTHORISED PERSON]

.....
[Director]

SCHEDULE 1: SOFTWARE

