

Free Trial Terms & Conditions – Noteable Service

1. INTERPRETATION

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

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or otherwise identified as Confidential Information.

Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures: as defined in the Data Protection Legislation.

Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

Documentation: the documentation made available to the Institution by EDINA online via www.noteable.edina.ac.uk or such other web address notified by EDINA to the Institution on an ad hoc basis, which sets out a description of the Service and the user instructions for the Service.

Effective Date: the date of acceptance of these terms and conditions.

Free Trial Term: the period of **30 days** from the Effective Date.

Institution: the educational institution/organisation or member within which has requested access to the Service on a trial basis, in accordance with these terms and conditions.

Institution Data: the data inputted by the Institution, Trial Users, or EDINA on the Institution's behalf for the purpose of using the Service or facilitating the Institution's use of the Service.

Service: the Noteable service provided by EDINA to the Institution, on a trial basis, under this agreement via the Learning Tool Interoperability (LTI) tool which connects a Virtual Learning Environment with the Noteable Service run by EDINA.

Software: the online applications provided by EDINA as part of the Service.

Trial Users: those employees and students of the Institution who are authorised by the Institution to use the Service and the Documentation, as further described in Clause 2.

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

Virus: any item (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

Vulnerability: a weakness in the computational logic (for example, code) found in software and hardware

components that when exploited, results in a negative impact to the confidentiality, integrity, or availability of the Service; the term **Vulnerabilities** shall be construed accordingly.

2. TRIAL USE

2.1 Subject to the restrictions set out in this *Clause 2* and the other terms and conditions of this agreement, EDINA hereby grants to the Institution a non-exclusive, non-transferable right, which permits the Trial Users to use the Service and Documentation during the Free Trial Term for the purposes of a free trial.

2.2 The Institution undertakes that the maximum number of Trial Users that it authorises to access and use the Service and the Documentation shall not exceed the number of Trial Users it has requested at the given time of use.

2.3 Each Trial User shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Service that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- (f) is otherwise illegal or causes damage or injury to any person or property.

2.4 Each Trial User shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this agreement:
 - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
 - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- (b) access all or any part of the Service and Documentation in order to build a product or service which competes with the Service and/or the Documentation; or
- (c) use the Service and/or Documentation to provide services to third parties; or
- (d) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Service and/or Documentation available to any third party;
- (e) attempt to obtain, or assist third parties in obtaining, access to the Service and/or

Documentation, *Clause 2*; or

(f) introduce, or permit the introduction of, any Virus or Vulnerability into EDINA's network and information systems.

2.5 The Institution shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Service and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify EDINA.

2.6 EDINA reserves the right, without liability or prejudice to its other rights to the Institution or any Trial User, to disable any Trial User's access to the Services if such Trial User carries out any activity which is breach of any of the provisions of Clauses 2. In the event of multiple or repeated breaches by any individual Trial User, EDINA may (i) contact the Trial User to discuss such breach or breaches, with a view to remedying the position; and/or (ii) terminate this agreement with immediate effect by giving written notice to the Institution and the Trial User.

3. USER SUBSCRIPTIONS

3.1 If the Institution wishes to purchase full access to the Service, on a subscription basis, beyond the Free Trial Term, the Institution shall notify EDINA in writing. EDINA shall evaluate such request for such a subscription and respond to the Institution with approval or rejection of the request.

4. SERVICE

4.1 EDINA shall, during the Free Trial Term, use its reasonable endeavours to provide the Service and make available the Documentation to the Institution on, and subject to, these terms and conditions.

5. DATA

5.1 EDINA shall follow its archiving procedures for Trial Users as for Institution Data as set out in its Data Retention Policy available at <https://noteable.edina.ac.uk/>.

5.2 EDINA shall, in providing the Service, comply with its Privacy Policy relating to the privacy and security of the Institution Data available at <https://noteable.edina.ac.uk/privacy/> or such other website address. Such document may be amended by EDINA at any given time and at its sole discretion.

5.3 Both parties will comply with all applicable requirements of the Data Protection Legislation. This *Clause 5* is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

5.4 The parties acknowledge that if EDINA processes any personal data on the Institution's behalf when performing its obligations under this agreement, the Institution is the controller and EDINA is the processor for the purposes of the Data Protection Legislation.

5.5 Without prejudice to the generality of *Clause 5.4*, the Institution will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to EDINA for the duration and purposes of this agreement so that EDINA may lawfully use, process and transfer the personal data in accordance with this agreement on the Institution's behalf.

5.6 Without prejudice to the generality of *Clause 5.4*, EDINA shall, in relation to any personal data processed in connection with the performance by EDINA of its obligations under this agreement:

(a) process that personal data only on the documented written instructions of the Institution unless EDINA is required by the laws of any member of the European Union or by the laws of the

European Union applicable to EDINA and/or Domestic UK Law (where **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK) to process personal data (**Applicable Laws**). Where EDINA is relying on Applicable Laws as the basis for processing personal data, EDINA shall promptly notify the Institution of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit EDINA from so notifying the Institution;

(b) not transfer any personal data outside of the European Economic Area and the United Kingdom unless the following conditions are fulfilled:

(i) the Institution and/or EDINA has provided appropriate safeguards in relation to the transfer;

(ii) the data subject has enforceable rights and effective legal remedies;

(iii) EDINA complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and

(iv) EDINA complies with reasonable instructions notified to it in advance by the Institution with respect to the processing of the personal data;

(c) assist the Institution, at the Institution's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

(d) notify the Institution without undue delay on becoming aware of a personal data breach;

(e) at the written direction of the Institution, delete or return personal data and copies thereof to the Institution on termination of the agreement unless required by Applicable Law to store the personal data (and for these purposes the term "delete" shall mean to put such data beyond use); and

(f) hold complete and accurate records and information to demonstrate its compliance with this *Clause 5* and immediately inform the Institution if, in the opinion of EDINA, an instruction infringes the Data Protection Legislation.

5.7 Each party shall ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).

6. THIRD PARTY PROVIDERS

The Institution acknowledges that the Service may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. EDINA makes no representation, warranty or commitment in respect of these aforementioned third parties and shall have no liability or obligation whatsoever in relation to the

content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Institution or any Trial User, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Institution or the Trial User and the relevant third party, and not EDINA. EDINA recommends that the Institution and each Trial User refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. EDINA does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Service.

7. EDINA'S OBLIGATIONS

7.1 EDINA undertakes that the provision of the Service will be performed substantially in accordance with the Documentation and with reasonable skill and care.

7.2 EDINA:

(a) does not warrant that:

(i) the Institution's use of the Service will be uninterrupted or error-free; or

(ii) that the Service, Documentation and/or the information obtained by the Institution through the Service will meet the Institution's requirements; or

(iii) the Software, Documentation or the Service will be free from Vulnerabilities; or

(b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Institution acknowledges that the Service and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

8. INSTITUTION'S OBLIGATIONS

The Institution shall:

(a) provide EDINA with:

(i) all necessary co-operation in relation to this agreement; and

(ii) all necessary access to such information as may be required by EDINA;

in order to provide the Service, including but not limited to Institution Data, security access information and configuration services;

(b) without affecting its other obligations under this agreement, comply with all applicable laws and regulations with respect to its activities under this agreement;

(c) carry out all other Institution responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Institution's provision of such assistance as agreed by the parties, EDINA may adjust any agreed timetable or delivery schedule as is reasonably necessary;

(d) ensure that the Trial Users use the Service and the Documentation in accordance with the terms and conditions of this agreement and shall be responsible for any Trial User's breach of this agreement;

(e) obtain and shall maintain all necessary licences, consents, and permissions necessary for EDINA, its contractors and agents to perform their obligations under this agreement, including without limitation the Service.

9. PROPRIETARY RIGHTS

9.1 The Institution acknowledges and agrees that EDINA and/or its licensors own all intellectual property rights in the Service and the Documentation. Except as expressly stated herein, this agreement does not grant the Trial User any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Service or the Documentation.

9.2 EDINA confirms that it has all the rights in relation to the Service and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

10. CONFIDENTIALITY

10.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:

- (a) is or becomes publicly known other than through any act or omission of the receiving party;
- (b) was in the other party's lawful possession before the disclosure;
- (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
- (d) is independently developed by the receiving party, which independent development can be shown by written evidence.

10.2 Subject to Clause 10.3, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.

10.3 A party may disclose Confidential Information to the extent that such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Clause 10.3, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

10.4 The Institution acknowledges that details of the Service, and the results of any performance tests of the Service, constitute EDINA's Confidential Information.

10.5 EDINA acknowledges that the Institution Data is the Confidential Information of the Institution.

11. LIABILITY

11.1 To the extent permitted by law, EDINA shall not be liable for any claims, actions, proceedings, losses, damages, expenses or costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the any Trial User's use of the Service and/or Documentation.

12. LIMITATION OF LIABILITY

12.1 Except as expressly and specifically provided in this agreement:

(a) the Trial User assumes sole responsibility for results obtained from the use of the Service and the Documentation by the Trial User, and for conclusions drawn from such use. EDINA shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to EDINA by any Trial User in connection with the Service, or any actions taken by EDINA at the Institution's direction;

(b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and

(c) the Service and the Documentation are provided to the Institution on an "as is" basis.

12.2 Nothing in this agreement excludes the liability of EDINA:

(a) for death or personal injury caused by EDINA's negligence; or

(b) for fraud or fraudulent misrepresentation.

13. TERM AND TERMINATION

13.1 This agreement shall, unless otherwise terminated as provided in this *Clause 14*, commence on the Effective Date and shall continue throughout the Free Trial Term, unless otherwise terminated in accordance with the provisions of this agreement.

13.2 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 commits a material breach of any other term of this agreement which is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

(b) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement.

13.3 On termination of this agreement for any reason:

(a) all licences granted under this agreement shall immediately terminate and the Institution and each Trial User shall immediately cease all use of the Service and/or the Documentation;

(b) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;

(c) EDINA may destroy or otherwise dispose of any of the Institution Data in its possession;

(d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

14. FORCE MAJEURE

EDINA shall have no liability to the Institution under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation: strikes, lock-outs or other industrial disputes (whether involving the workforce of EDINA or any other party), failure of a utility service or transport or telecommunications network, acts 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 sub-contractors, provided that the Institution is notified of such an event and its expected duration.

15. VARIATION

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

16. ENTIRE AGREEMENT

16.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

16.2 Each party acknowledges that, in entering into this agreement, it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

16.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

17. ASSIGNATION

The Institution shall not, without the prior written consent of EDINA, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

18. NO PARTNERSHIP OR AGENCY

Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

19. GOVERNING LAW

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 Scotland.

20. 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 agreement or its subject matter or formation (including non-contractual disputes or claims).