1. Interpretation

1.1 Definitions:

- **Brilliant Club IPRs**: all Intellectual Property Rights necessary or desirable to enable a School to receive and use the Services.
- **Business Day**: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
- **Charges**: the charges payable by the School for the supply of the Services by The Brilliant Club, as set out in the Specification.
- **Conditions**: these terms and conditions set out in clause 1 to clause 9 (inclusive).
- **Contract**: the contract between the School and The Brilliant Club for the supply of the Services on the terms specified in the Specification and these Conditions.
- **Intellectual Property Rights**: all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.
- **Mandatory Policies**: the business policies and codes referred to in the Specification, as amended by notification to The Brilliant Club from time to time.
- **PhD Tutors**: the tutors who will deliver The Scholars Programme, as set out in the Specification.
- **School Materials**: all materials, equipment and tools, drawings, specifications and data supplied by the School to The Brilliant Club.
- **Service Period**: the period of time in which The Brilliant Club is to provide the Services to the School, as set out in the Specification.
- **Services**: the services to be provided by The Brilliant Club pursuant to this Contract, as described in the Specification.
- **Specification**: the document detailing the Services as agreed between The Brilliant Club and the School.

1.2 Interpretation:

1.2.1 A reference to a statute or statutory provision is a reference to it as amended or re-enacted.
1.2.2 Any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
1.2.3 A reference to writing or written includes e-mail.

2. Commencement and term

2.1 The Contract shall commence on the date of the Specification and shall continue for the duration of the Service Period, unless terminated earlier in accordance with the terms of the Contract.

3. Supply of services

3.1 The Brilliant Club shall supply the Services to the School for the duration of the Service Period in accordance with the Contract.

3.2 In supplying the Services, The Brilliant Club shall:

3.2.1 perform the Services with reasonable care and skill;
3.2.2 use reasonable endeavours to perform the Services in accordance with the service description set out in the Specification;
3.2.3 ensure that all goods, materials, standards and techniques used in providing the Services are of satisfactory quality and are fit for purpose; and
3.2.4 comply with:
   (a) all applicable laws, statutes, regulations and codes from time to time in force; and
   (b) the Mandatory Policies,

provided that The Brilliant Club shall not be liable under this agreement if, as a result of such compliance, it is in breach of any of its obligations under this agreement.
4. School's obligations

4.1 The School shall:

4.1.1 comply with its obligations as set out in the Specification;

4.1.2 co-operate with The Brilliant Club in all matters relating to the Services;

4.1.3 provide, for The Brilliant Club, its agents, subcontractors, consultants, employees and the PhD Tutors, in a timely manner and at no charge, access to the School's premises, office accommodation, data and other facilities as required by The Brilliant Club; and

4.1.4 provide, in a timely manner, such information as The Brilliant Club may require, and ensure that it is accurate in all material respects.

4.2 If The Brilliant Club's performance of its obligations under this agreement is prevented or delayed by any act or omission of the School, its agents, subcontractors, consultants or employees, The Brilliant Club shall:

4.2.1 not be liable for any costs, charges or losses sustained or incurred by the School that arise directly or indirectly from such prevention or delay;

4.2.2 be entitled to payment of the Charges despite any such prevention or delay; and

4.2.3 be entitled to recover any additional costs, charges or losses The Brilliant Club sustains or incurs that arise directly or indirectly from such prevention or delay.

5. Intellectual property

5.1 The Brilliant Club and its licensors shall retain ownership of all Brilliant Club IPRs. The School and its licensors shall retain ownership of all Intellectual Property Rights in the School Materials.

5.2 The Brilliant Club grants the School, or shall procure the direct grant to the School of, a fully paid-up, worldwide, non-exclusive, royalty-free, licence to copy The Brilliant Club IPRs for the purpose of receiving and using the Services in the School's business during the term of the Contract.

5.3 The School grants The Brilliant Club a fully paid-up, worldwide, non-exclusive, royalty-free, non-transferable licence to copy and modify the School Materials for the term of this Contract for the purpose of providing the Services to the School in accordance with this Contract.

6. Charges and payment

6.1 In consideration for the provision of the Services, the School shall pay The Brilliant Club the Charges in accordance with this clause 6 and the Specification.

6.2 The Brilliant Club shall submit invoices for the Charges (plus VAT, if applicable) to the School at the intervals specified in the Specification.

6.3 The School shall pay each invoice due and submitted to it by The Brilliant Club, within 14 days of receipt, to a bank account nominated in writing by The Brilliant Club.

6.4 If the School fails to make any payment due to The Brilliant Club under this Contract by the due date for payment, then, without limiting The Brilliant Club's remedies under clause 8, The Brilliant Club may suspend all Services until payment has been made in full.

6.5 All amounts due under this agreement shall be paid by the School to The Brilliant Club in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
7. Limitation of liability

7.1 Nothing in this Contract shall limit or exclude The Brilliant Club’s liability for any liability which cannot be limited or excluded by applicable law.

7.2 Subject to clause 7.1, The Brilliant Club shall not be liable to the School, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement for:

7.2.1 loss of profits;
7.2.2 loss of sales or business;
7.2.3 loss of agreements or contracts;
7.2.4 loss of anticipated savings;
7.2.5 loss of use or corruption of software, data or information;
7.2.6 loss of or damage to goodwill; and
7.2.7 any indirect or consequential loss.

7.3 Subject to clause 7.1, The Brilliant Club’s total liability to the School, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Contract shall be limited to the total amount of the Charges.

8. Termination

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

8.1.1 the other party commits a material breach of any term of this Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 21 days after being notified in writing to do so;

8.1.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), 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 its assets or ceasing to carry on business;

8.1.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

8.1.4 the other party’s financial position deteriorates to such an extent that in the terminating party’s opinion the other party’s capability to adequately fulfil its obligations under this Contract has been placed in jeopardy.

8.2 Without affecting any other right or remedy available to it, The Brilliant Club may terminate the Contract with immediate effect by giving written notice to the School if the School fails to pay any amount due under this Contract on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment.

8.3 On termination of this Contract for whatever reason:

8.3.1 the School shall immediately pay to The Brilliant Club all of The Brilliant Club’s outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, The Brilliant Club may submit an invoice, which shall be payable immediately on receipt;

8.3.2 termination of the Contract shall not affect any of the parties’ rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract which existed at or before the date of termination; and

8.3.3 any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.
9. General

9.1 Force majeure. Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

9.2 Assignment and other dealings

9.2.1 The School shall not assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Contract without The Brilliant Club’s prior written consent.

9.2.2 The Brilliant Club may at any time assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights under this Contract.

9.3 Confidentiality

9.3.1 Each party undertakes that it shall not at any time during this Contract, and for a period of five years after termination of this Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 9.3.2.

9.3.2 Each party may disclose the other party’s confidential information:

(a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party’s obligations under this Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party’s confidential information comply with this clause 9.3; and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

9.3.3 No party shall use any other party’s confidential information for any purpose other than to perform its obligations under this Contract.

9.4 Entire agreement. This Contract 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.

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

9.6 Waiver. A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. 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 or prevent or restrict the further exercise of that or any other right or remedy.

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

9.8 Notices

9.8.1 Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, or e-mail.

9.8.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 9.8.1; 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, if sent by e-mail, one Business Day after transmission.
9.8.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

9.9 Third party rights No one other than a party to this agreement shall have any right to enforce any of its terms.

9.10 No partnership or agency

9.10.1 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.

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

9.11 Counterparts. This Contract 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.

9.12 Governing law. This Contract, and any dispute or claim arising out of or in connection with it (including non-contractual disputes or claims), shall be governed by, and construed in accordance with English law.

9.13 Jurisdiction. Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract (including non-contractual disputes or claims).