SOWISO General Terms & Conditions regarding license agreements

1. Definitions

"Agreement"	means the agreement between Sowiso and the Client for the sale and purchase of licenses for use of the SOWISO Platform by Sowiso to a Client in accordance with these Conditions.
"Clause"	means an article of these Sowiso General Terms & Conditions of license sales.
"Client"	means an entity or individual acting as a professional – not being an end user – entering into an Agreement with Sowiso.
"Conditions"	means the general terms and conditions set out in this document and as amended from time to time.
"Force Majeure Event"	means any events or circumstances beyond the reasonable control of the relevant party to the Agreement (in Dutch: *overmacht* including, without limitation, any industrial action, any act of God, explosion, fire or accident, war or threat of war, sabotage, cyber-attack, any occurrence or resurgence of pandemics, acts of any governmental or supranational authority, or currency restrictions and restraints), which under circumstances may lead to alteration or dissolution of the Agreement in accordance with Article 6:258 Dutch Civil Code.
"GDPR"	means Regulation (EU) 2016/679 Of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation).
"License Year"	means each period of 12 (twelve) consecutive months during which Client has a right to use the SOWISO Platform on the basis of an Agreement, with the notion that a following License Year starts after the previous period of 12 (twelve) consecutive months insofar as applicable.
"Parties"	means Client and SOWISO B.V., also doing business as Bolster Academy.
"Sowiso"	means SOWISO B.V., also doing business as Bolster Academy, a private company with limited liability under the laws of the Netherlands, having its official seat in Amsterdam, the Netherlands and its address at Sciencepark 402, 1098 XH Amsterdam, the Netherlands, registered with the Dutch Trade Register (*Kamer van Koophandel*) under number 50647482.
"SOWISO Platform"	means the subject of the Agreement consisting of a non-exclusive non-transferable license for use of the SOWISO e-learning platform and digital math courses as developed and owned by Sowiso and protected by intellectual property rights of Sowiso. The SOWISO Platform is a medium-independent website, meaning that the platform can be accessed with a computer/laptop or tablet with an internet connection and browser with html5 support.
"Trial Period"	means a free trial period of use of the SOWISO Platform by Client by means of a fixed term Agreement, possibly to be converted into an Agreement entailing a purchase of a license to the SOWISO Platform.
"User"	means any created account on the SOWISO Platform and a person who is liaised with Client and using the SOWISO Platform under an license Agreement with Sowiso, including students, teachers, authors, and admin users.

2. Applicability of Conditions

2.1.   These Conditions are applicable to all present and future (implied) contracts, offers, Trial Periods, quotations, agreements and other services between Sowiso and the Client, including but not limited to all Agreements, quotations and Trial Periods regarding Products and any continued rights and obligations in connection therewith including but not limited to the use of intellectual property, insofar as relevant, in accordance with these Conditions. The Client agrees to the applicability of the Conditions to subsequent agreements between the Client and Sowiso.

2.2.   The applicability of terms and conditions of the Client or any other terms and conditions that the Client may wish to adhere to other than the Conditions are hereby expressly rejected, unless otherwise agreed in writing by Parties prior to entering into the Agreement.

2.3.   Sowiso reserves the right to amend these Conditions at any time. The new Conditions will take effect immediately upon notification of the Client to that effect. The Conditions will be available via the website (https://sowiso.nl/pdf/terms/).

2.4.   These Conditions are not applicable to a legal relationship with an end consumer which – for the avoidance of doubt – is not the Client; the applicability of consumer law, whether based on laws and regulations applicable within the European Union or otherwise, is explicitly excluded.

3. Grant of license

3.1.   Unless otherwise agreed in writing, by means of the Agreement, the Client is granted a non-transferable and nonexclusive license to use the SOWISO Platform, for the development and use of e-learning solely for a certain amount of users liaised with Client. Depending on the Agreement, such license may include the right to use one or more existing courses. The license shall take effect from the date the SOWISO Platform is used, distributed or installed. This license may not be assigned or transferred by Client, voluntarily or by operation of law (including without limitation, by transfer of ownership interests in your business), to any party without the Sowiso's express prior written permission. Client shall have no power to grant sub-licenses, prepare derivative works or modify the SOWISO Platform.

3.2.   Sowiso shall retain all title, copyright and other proprietary rights in the SOWISO Platform and any modifications or translations thereof, as set out in Clause 10 of these Conditions. Client shall acquire only the limited license to the SOWISO Platform granted under the express terms of Clause 3.1. above.

3.3.   Client will use pre-existing Sowiso courses offered via the SOWISO Platform insofar as applicable. There are no limitations regarding the amount of courses Client can develop themselves by use of the SOWISO Platform.

3.4.   The purchase of a license to the SOWISO Platform includes the following:

    a)   Access for Client of to the latest version of the platform with all her functionalities;
    b)   Client's right to free updates of the platform;
    c)   technical and functional support for Client;
    d)   hosting;
    e)   a workshop for teachers/authors liaised with Client, optimizing knowledge and use of the SOWISO Platform for Client.

3.5.   Upon entering into the Agreement, Client will be supplied one copy of the SOWISO Platform in executable form.

3.6.   Sowiso is continuously developing the platform and may include ad hoc changes insofar as it deems necessary. Sowiso works agile and the platform plans new releases regularly.

3.7.   Sowiso provides a stable platform due to using different test cycles during development. Each new release goes through a series of manual and Sowiso (unit and functional) tests both during

development and before release. In addition, with each release, Sowiso communicates the changes from that release to the teachers / authors involved.

3.8. The content (both existing Sowiso courses and new content created by the Client) will always remain backwards-compatible, barring exceptions.

4. Support

4.1. Sowiso provides free functional support. A prerequisite for providing functional support is that Sowiso can only be contacted by teachers / authors of the Client who have attended one or more annual training or workshop sessions. In addition, Sowiso also provides free technical support on the platform, which ensures that the platform is online.

4.2. Additional support for summative testing is not included as standard and can be purchased at an additional cost.

4.3. Sowiso is responsible for the hosting that will take place at a datacentre of Amazon Web Services (AWS). Sowiso provides an uptime of 99,9% per month, with the exception of (planned) software and server updates.

5. Entering into an Agreement

5.1. All unsigned proposals for an Agreement issued by or on behalf of Sowiso, including quotations in relation to the SOWISO Platform, Trial Period options or negotiations, shall be non-binding for Sowiso. Signing thereof or confirmation to that effect in writing (including by e-mail) by Client constitutes an irrevocable offer (*aanbod*), which may be accepted (*aanvaard*) by Sowiso within reasonable time, which then constitutes an Agreement between Parties.

5.2. Oral commitments or agreements by or with its personnel, representatives, sellers or other intermediaries shall not be binding upon Sowiso until after and insofar as it has confirmed them in writing (including by e-mail).

6. Pricing and payment

6.1. The price of use of the SOWISO Platform and respective courses shall, unless explicitly stated otherwise, be as stated in the Proposal or in the Order confirmation and acceptance of the Order by or on behalf of Sowiso.

6.2. The price to be paid by Client under the Agreement for use of the SOWISO Platform is invoiced by Sowiso each year before the start of the corresponding License Year. The Client shall pay the invoice within agreed terms as specified on the invoice. The Client is not permitted to suspend or offset any payment obligations.

6.3. Prices as set out in the Agreement will not change each year more than the rate of inflation, as measured by the official Consumer Price Index (CPI) in the Netherlands.

6.4. Sowiso may recover from the Client all costs, expenses and other liabilities (including legal costs on a full indemnity basis) that Sowiso incurs in obtaining payment of sums due and may charge the applicable trade interest (*wettelijke handelsrente*), being as of the date hereof 8.00% per annum, on the amounts due. In case of a conflict about the use of the SOWISO Platform, Sowiso's business administration is decisive.

7. Duration and Termination

7.1. Sowiso is entitled to dissolve (*ontbinden*) the Agreement or suspend (*opschorten*) its obligations towards the Client, at any time without prior notice of default all at its sole discretion and without prejudice to any right it may have to compensation for costs, damage and interest, in any case if:
   a) the Client fails to fulfil one or more of its obligations under the Agreement, the Conditions or fails to do so on time or adequately;
   b) the Client is declared bankrupt, applies for a (temporary) suspension of payments, proceeds to liquidate or dispose of its business, or if all or part of its assets are attached, or if there is an equivalent applicable under foreign law;
   c) the Client suspends, threatens to suspend a substantial part of his business;
   d) the Client's financial position deteriorates in such a way that Sowiso has sufficient reason to doubt that the Client shall adequately perform under the Agreement; or
   e) any similar situation as mentioned above;
   in which case, any outstanding invoice of Sowiso will be immediately due and payable.

7.2. An Agreement is entered into for the duration as set out in the Agreement, unless agreed otherwise in writing. After each License Year, Client can terminate the Agreement before the end of the term as set out in the Agreement by giving at least one month's notice in writing (including via e-mail) to Sowiso.

7.3. The number of licenses as set out in the Agreement can be changed upon request by Client each year.

7.4. Any provision of the Agreement 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.

8. Limitation of liability

8.1. The liability of Sowiso for any resulting damage suffered by the Client is excluded, except in the event of intent or gross negligence (*opzet of grove schuld*) by Sowiso. Subsequent damage by the Client shall never be eligible for compensation. In any event, Sowiso's liability in aggregate towards a Client is restricted to the price paid by the Client as per the relevant Agreement.

8.2. Without prejudice to the obligation to complain (as referred to in section 6:89 of the Dutch Civil Code), every right to compensation on the part of the Client lapses after 3 (three) months after the event from which the damage arose.

9. Force Majeure Event

9.1. If a party is affected by a Force Majeure Event, it shall promptly notify the other party. Notwithstanding these Conditions, neither party shall be deemed to be in breach of the Conditions for any delay in performance or non-performance of any of its obligations, to the extent that the delay or non-performance is caused by a Force Majeure Event.

9.2. If either party asserts the occurrence of a Force Majeure Event and is relieved from performing any of its obligations for a period in excess of 4 weeks, the other party may dissolve the Agreement in whole or in part or terminate the Agreement by giving written notice to the party which has claimed occurrence of a Force Majeure Event within 14 days.

10.   Intellectual Property

10.1.   The industrial and intellectual property rights to or in connection with the SOWISO Platform and digital courses provided by Sowiso remain with Sowiso or third-party entitled parties and are never transferred to the Client nor to the User. Intellectual property rights relate - among others but are not limited thereto - to copyright on the software code, the user interface, texts and further design and materials related to the SOWISO Platform, and on the Sowiso courses. Documents and data originating from Sowiso remain its property and may not be made available or disclosed to third parties by the Sowiso without express consent of Sowiso.

10.2.   The intellectual property of the content that is made by the authors of the Client on the platform lies with the Client, in which regard the Client can request to receive an XML export of its material at any time, thereby acquiring a representation of its intellectual property, for example after termination of the use of the SOWISO e-learning platform or at the end of a course period. This XML export is free of charge.

10.3.   The Client can join the Saas-Escrow agreement Sowiso has in place with Escrow4All. The Escrow ensures that the SOWISO Platform will remain available to Client in the event of Sowiso going bankrupt. Client bears the costs for this Saas-Escrow agreement.

10.4.   Parties are entitled to use the (trade) name and logo of the other party, either being a registered (trade)mark or otherwise. This right to use name and logo can be withdrawn by either party if the other party does not meet the obligations in the Agreement or acts contrary to these Conditions, for example the delivery of support.

10.5.   All further use by the Client of any copyrighted or otherwise protected material from Sowiso should be agreed in writing (including by e-mail) by Sowiso.

11.   (Cyber) Security measures

11.1.   Sowiso is an ISO27001 certified company.

11.2.   Sowiso strives to deliver the platform with the highest possible quality level. An important point of attention in this regard is the integrity of the User's data - all the more so because it concerns the educational performance of the users, of which a possible leakage is characterized as serious. In the case of incidents or data breaches, Sowiso always reports this first and only to the Client (within 1 day). Sowiso cooperates to deliver the required information to the Client in the event of a data breach.

11.3.   Sowiso cooperates with requests for inspection, correction and removal of data and / or User accounts (by students, via Client). If Sowiso receives such requests directly, it will forward them to the Client within 1 business day. Client does not have direct access to log files, but Sowiso will provide these upon request, for example during suspicions of fraud.

11.4.   Links with the e-learning environment are encrypted at all times. Applications that are served via a secure connection (TLS 1.2) have a Qualys SSL Labs rating of at least "A" (or formulated differently: The TLS / SSL configuration required for this is maintained to achieve the best possible encryption between the clients and the web server and preferably complies with the National Cyber Security Center specification). The software used to build the environment is protected according to relevant standards such as the NCSC guideline (IT security guidelines for web applications and OWASP top 10). Sowiso is responsible for maintaining and timely deploying security patches of the underlying platform. Patches are installed within 24 hours.

11.5.   Sowiso is part of the Privacy Covenant Education [HYPERLINK] (Dutch website only). Sowiso is supported and regularly tested by ICT Institute, Securify [HYPERLINK] and Digitrust [HYPERLINK].

11.6. All User data is stored in a secure database, which cannot be accessed directly from the application, but only locally from the server. Only "security-verified" authorized employees of Sowiso, with administrative clearance, have access to this.

11.7. The hosting takes place at Amazon Web Services (in a data center within the European Economic Area). In the event of a (potential) bankruptcy, Sowiso will immediately submit an export of the Client's User data to the Client.

12. Privacy protection

12.1. Sowiso acts in accordance with the GDPR (*AVG*) and further relevant privacy regulations and will never share e-mail addresses and other data provided with third parties, unless explicit permission has been granted for this by Users or unless it has a legal duty to do so. Sowiso will only use the information provided to improve the use of the SOWISO Platform. The e-mail address provided will only be used for communication with the User regarding matters relating to the SOWISO Platform and its use.

12.2. Sowiso may use the data emanating from use of the Platform by Client entailing among others anonymized User data. This use may only serve to improve services and software. In that case, Sowiso will always anonymize User data and will never publish or share it with third parties without consent of the relevant data subject.

12.3. Storage and use of User data is necessary for the SOWISO Platform to function. If a User wants no storage and use of data to take place, the User can only choose not to use the SOWISO Platform and therefore not to log in.

12.4. When entering into an Agreement, Parties will sign a Data Processing Agreement (DPA) which will further regulate compliance with the relevant privacy regulations.

12.5. With regard to personal data of Users processed in relation to use of the SOWISO Platform, Client shall act as a controller and Sowiso shall act as a processor under the GDPR.

12.6. If Sowiso receives a request or order from a Dutch or foreign regulator or an investigation, criminal prosecution or national security authority to provide (access to) personal data, Sowiso will inform the Client without delay. When handling the request or order, Sowiso will take into account all instructions from the Client (including the instruction to leave the handling of the request or order to the Client, in whole or in part) and provide all reasonably required cooperation.

12.7. In the event of an incident (such as a data breach), Parties are obliged to make an effort to limit the damage as much as possible, for example through rapid direct communication, proper coordination of analyses and reporting to the relevant authorities. Sowiso does not accept responsibility and shall not be liable for fines that could have been prevented by effort that could reasonably be expected of the Client.

12.8. Sowiso may use the User data generated by the users of the Client on the SOWISO Platform for the further development of the SOWISO Platform. These developments concern functionalities that improve the user experience for students and teachers, such as adaptivity and personalized e-learning. This user data is always made anonymous and will never be shared with third parties without the explicit consent of the Client.

13. Governing Law

13.1. The Agreement and these Conditions including for the avoidance of doubt this Clause 13, and any (non-contractual) obligations arising out of or in connection with the Agreement or these Conditions, shall be governed by the laws of the Netherlands.

13.2. The competent court in Amsterdam, the Netherlands, and its relevant higher courts shall have exclusive jurisdiction regarding any disputes arising out of or in connection with the Agreement, these

Conditions, the execution thereof and any related disputes, including any disputes based on tort and disputes regarding the legal validity and formation of the Agreement and these Conditions.

14. Other

14.1.   One or more permanent contact persons will be designated from the Client and from Sowiso for substantive and technical matters.

14.2.   If the Client has specific (development) wishes during the term of the agreement, Sowiso can realize these. Separate agreements will have to be made for this.

14.3.   No waiver by Sowiso of any breach of the Agreement by the Client shall be considered as a waiver of any subsequent breach of the same or any other provision. If any provision of the Conditions is held by any competent authority to be invalid or unenforceable, the validity of the other conditions shall not be affected.

14.4.   Any notice required or permitted to be given by either party to the other shall be in writing (including by e-mail) addressed to its registered office or such other address as may have been notified to the party giving the notice.