

REVIEW 

REVIEW 

REVIEW Support and SLA agreement

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SERVICE LEVEL AGREEMENT

1. Parties

Academ Pty Ltd (ACN 145 132 252) whose registered office is at Level 2, 107 Alexander Street, Crows Nest NSW 2065 ('the Company')

('The Client')

2. Recitals

- i. Academ has agreed to provide to the Client a software application known as "REVIEW" ("the Application") solely for the uses permitted by the Company.
- ii. The Company will provide technical support for the use of REVIEW by the Client as provided below.
- iii. The Client will be using the "Hosted" version (not Self Hosted).

3. Definitions

"The Application" means the software application known by its generic name "REVIEW" and which is to be only for the purposes authorised by the Company, that is for the evaluation of student performance.

"The Client" shall be the party stated in this Agreement and include its employees, staff, nominees and contractors acting on behalf of or with the authority of the Client.

"The Company" includes all staff, employees and contractors acting on behalf of or with the authority of the Company to provide the Support Services.

"Level 3 Support" is the highest level of support in a three-tiered technical support. They are responsible for handling the most difficult and advanced problems. These individuals are experts in their fields and are responsible for the research and development of solutions to new or unknown issues. Upon encountering new problems; however, Tier 3 personnel must first determine whether or not to solve the problem and may require the customer's contact information so that the technician can have adequate time to troubleshoot the issue and find a solution. Please refer to support levels in Appendix 3

"The Priority Levels" means the degree of priority assigned to each level of support as fully described in table to Appendix 1.

"Initial Term" is the period from signing the contract for a duration of 6 months.

"Hosted" version means the application code and data is stored with a 3rd party (not the University). The alternative is a "Self Hosted" version, meaning the University will supply their own server hardware to store the code and data.

4. Technical Support Services

Academ will provide the following Support Services:

- i. Periodically (and no less than twice a year) check and verify that the correct software releases and latest updates for the Application developed by Academ are installed on the Application server

- ii. Periodically (and no less than twice a year) check and verify that the Application is correctly configured for the Customer's network and Environment (e.g. LDAP, integration etc)
- iii. The Support Services will be assigned a level of priority as determined in the absolute discretion of the Company. The level of priority assigned to each request made by the Client will be as described in the schedule at Appendix 1 (which forms part of this Agreement).

Terms and Conditions

The provision of the Support Services by the Company are subject to the following terms conditions and limitations:

- i. The Company's technical support representatives will provide support to all issues concerning the Application where requests for support are made by the Client to the Company in the manner prescribed in this agreement. Level 3 support includes, if necessary, replicating customer configurations in the support test lab in order for diagnostic purposes. Support representatives providing level 3 support will also have access to the software developers for in depth analysis of the issues in question.
- ii. The Company will make all reasonable efforts to find a resolution to an issue or request for support made by the Client. The Client hereby agrees that the Company may engage the services of third parties (unconnected to the Company) where such engagement is required for the resolution of an issue and after the Client has agreed in writing to such engagement and has paid the cost of such engagement of a third party prior to such engagement;
- iii. Where reasonably required by the Company, the Client will provide to the Company such information, data and assistance to enable the Company to meet its obligations to provide the Support Services. Such information, data and/or assistance is to be rendered to the Company in a reasonable period of time of such request being made. Where there is a delay providing such information or assistance then the Company shall include the period of delay in providing such information, data and/or assistance towards the sum attributed to Support Services.
- iv. From time to time the Company may need to remotely access Client systems in order to effect investigations and resolutions. It is the sole obligation of the Client to provide such remote access via a secure encrypted connection (e.g., VPN, SSH or HTTPS). Where such remote access is provided the Company will not delete, modify, copy or remove any files or data without first obtaining consent in writing from the Client.
- v. If self hosted it is a requirement of this Agreement that the Client makes periodic backup of the Applications (and no less than once per month) and upon reasonable request of the Company make available access to such back ups to ensure that the Client is complying with this obligation.
- vi. Where no immediate solution is available to solve the issue raised by the Client, it may be necessary to introduce a temporary "work-around" solution while a permanent solution is investigated, tested and implemented. This "work-around" will be designed to provide a basic functioning system – although this may involve changes to or implementation of manual working processes at the Client site, or reversion to an earlier version of the Application system configuration. Where such a "work-around" is proposed by the Company, projected completion timescales for the implementation of a complete resolution will be given.
- vii. The Client, its staff, employees, nominees and contractors are required to lodge all requests for technical support in the Company's web based Support System (<https://academ.atlassian.net>) ('Support System'). This provides the facilities for both Client and the Company to view call status, assign calls, escalate calls as well as integrate historical call data into a 'knowledge base' to ensure prompt resolution.

- viii. Requests for support made by the Client not using the Support System will be disregarded with exception where the use of the Support System is not reasonably possibly due to the said Support System being disabled or not capable of use arising from an issue, problem, defect or development that lay within the control of the Company.
- ix. For the purposes of time recording, a request for the resolution of an issue ('an Incident') will be classed as resolved as soon as the Company has provided the Client with what it believes to be the appropriate solution. The status of the Incidents in the Company's Support System will be changed to "On Hold – Awaiting Customer", indicating that the Company is waiting for confirmation from the Client that the Incident has indeed been resolved. If the Client informs the Company that the solution has not been effective then the Incident will be reopened and the time assessment resumed and the Company will resume work on providing an effective solution. In the case of a partially effective resolution then the priority level will be reassessed as appropriate for the changed circumstances. If within 28 days the Client fails to inform the Company as to the effectiveness of the solution, then the Company will change the status of the Incident to "Closed".
- x. The company will not support any version other than the latest version for more than 2 years (24 months). The application will be upgraded to the latest version if the Client has not upgraded within 2 years.
- xi. The Company will only provide updates (other than bug fixes) and customisations to the latest version of the application. In the event the Client requires customisation to the application they must upgrade to the latest version of the application.

5. General

- i. The Company does not provide any form of managed service with exception to provide the Application and the services in Sub-Paragraphs 1.1 and 1.2 above.
- ii. If self hosted the Company is not responsible for the maintenance, configuration or upkeep of the Client's systems, network or any other mainframe on which REVIEW is installed.
- iii. If self hosted the Company is not required to make any changes to the Client's systems, network or mainframe on which the Application is to be installed with exception where the Client and the Company agree that the changes are necessary to facilitate the installation of the Application and in this case the changes to be made will be undertaken at the sole expense of the Client who accepts and bears all liability and responsibility for such changes and any consequential losses, damage, loss of data, interruption or other event arising or caused by such changes to the Client's system, network and/or mainframe.
- iv. The Company will not be liable for any losses, damage, injury, economic loss, cost of repair that may arise where the support provided was implemented incorrectly by the Client its staff, employees, nominees and contractors, not at all or in a manner inconsistent with the advice given by the Company.
- v. The Company is not be required to provide ongoing support beyond the date to which fees for the technical support have been paid where such fees are due but unpaid for more than 14 days and in such event it is agreed between the parties that the Company will not be liable for any damage, loss of data, interruption or other event that may arise or occur and which arose at a time after the expiry of the period for which support was paid for.

6. Hours of Service

The Company will provide technical support during business hours defined as between: 09:00 am to 18:00 pm hrs Australian Eastern Standard Time

7. Security

If self hosted the Company requires, at its absolute discretion, that the Client has all or any of the following security features implemented on its systems prior to the installation of REVIEW. The security implementation are but not limited to the following:

- Configuration of firewall: This will block unauthorised access on listed ports in addition to unwanted/suspicious traffic
- Lock down of SSH access to prevent root access – Don't allow root ssh access, this is a default username and is often used when attempting to gain unauthorised entry.
- Configuration of Fail2Ban – This tool will automatically block the IP addresses of users with too many failed login attempts via ssh
- FTP access will be disabled - FTP is another path often taken by hackers to gain access
- Lock down of Database server to only allow access from the review web servers – Reduce the risk of hackers attempting to gain direct database access
- Installation of SSL certificates to ensure all web traffic is encrypted via https
- Two-layer Access Controls to prevent unauthorised users from viewing or modifying content that they shouldn't
- Hashed-and-salted user passwords using SHA-256 encryption. Isolated application server and database (to minimise risks of database compromise)
- All application data served via HTTPS (with no option for HTTP access): This means all information sent & received over the internet is encrypted
- Code has been vigorously tested using 'fuzzing' tools. These tools are vital in detecting cross-site scripting and SQL injection vulnerabilities (among others)

8. Ownership of Application

All copyright, title and ownership in the Application remains at all times and for all purposes with the Company. It is hereby declared that

All personally identifiable information shall be treated as strictly confidential and shall not be disclosed or provided to any Example Company, Inc. employee, contractor, or other third party who has not signed a Data Confidentiality Agreement. In addition, access to such data shall be allowed only if necessary in the performance of that person's work responsibilities. All other access must be authorized in writing by the assigned Company director. This is in line with the Australian privacy principles stipulated in the Privacy Act (1999).

In addition:

- i.* No attempt shall be made to identify any individual or other personally identifiable information contained in such records.
- ii.* No data that identifies specific individuals or other personally identifiable information may be accessed or shared with any other party. Access to this data may be allowed in the course of an approved application development project.
- iii.* No aggregate data from such records shall be reported or published without written permission of the Company director.
- iv.* Data may not be copied or stored in any format outside of approved backup procedures.
- v.* Developers may not copy data for development and testing purposes without the written permission of the Company director.
- vi.* Access to production, acceptance test, and development data, shall be protected in accordance with the requirements of the Company director.
- vii.* Any breach, or suspected breach, of data confidentiality shall be reported immediately to the Client and affected parties.
- viii.* Academ will take such reasonable action as the Client may direct to mitigate the consequences of a Breach and cooperate fully with the Client and the applicable Privacy Commissioner in reporting and investigating the Breach.
- ix.* Violation of this agreement may be the basis for termination of the contract, and such other legal penalties as may be prescribed by State or Federal law.

REVIEW LICENSE AGREEMENT - Terms and Conditions

PLEASE READ THE FOLLOWING TERMS AND CONDITIONS CAREFULLY BEFORE USING REVIEW. THE TERMS AND CONDITIONS OF THIS AGREEMENT GOVERN YOUR USE OF REVIEW UNLESS YOU AND ACADEM PTY LTD (“AE”) HAVE EXECUTED A SEPARATE AGREEMENT. USING REVIEW, CONSTITUTES YOUR LEGALLY BINDING SIGNATURE.

BY SIGNING THIS AGREEMENT YOU CERTIFY THAT: YOU HAVE READ AND UNDERSTAND THE TERMS OF THIS AGREEMENT AND YOU ARE CONSENTING TO BE BOUND BY ALL THE TERMS OF THIS AGREEMENT; ALL INFORMATION SUBMITTED BY YOU RELATED TO THIS AGREEMENT AND YOUR REVIEW APPLICATION IS ACCURATE, COMPLETE, TRUE, AND NOT MISLEADING. IF YOU ARE AN EMPLOYEE OR CONSULTANT OR CONTRACTOR TO A UNIVERSITY/INSTITUTE THAT WILL USE REVIEW, YOUR AGREEMENT TO THESE TERMS WILL BE DEEMED TO BE THE AGREEMENT OF THAT UNIVERSITY/INSTITUTE AND YOU REPRESENT AND WARRANT THAT YOU HAVE AUTHORITY TO BIND THAT ENTITY TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE WITH THE TERMS OF THIS AGREEMENT, YOU ARE NOT AUTHORISED TO USE REVIEW IN ANY MANNER.

THIS AGREEMENT IS MADE BY AND BETWEEN ACADEM PTY LTD (“AE”) AND THE PERSON OR UNIVERSITY/INSTITUTE LISTED IN THE REVIEW LICENSING DETAILS SUBMITTED IN CONJUNCTION WITH THIS AGREEMENT. REVIEW SOFTWARE LIMITED IS REFERRED TO AS “REVIEW” AND YOU ARE REFERRED TO AS “LICENSEE”

1. License.

- a. Software. For purposes of this Agreement “Software” means the REVIEW software.
- b. License Grant. Upon payment of all applicable fees and subject to the terms of this Agreement, AE grants to Licensee a non-exclusive, non-transferable license during the term.
- c. Licensee may only use the Software during the term of this Agreement, and all use of the REVIEW must cease on the Expiry Date, unless the agreement is renewed.
- d. Ownership. Licensee owns the media on which the Software is recorded, but Licensee acknowledges that AE and its licensors retain ownership of the Software itself.
- e. User License Agreement. The terms and conditions stated in this license agreement will govern the use of each respective copy of the software used.
- f. In the event of Academ going into Liquidation the client will have the opportunity to negotiate ongoing licensing arrangements with the University of Technology Sydney (as the owners of the software IP).

2. Restrictions

- a. General Restrictions. Licensee acknowledges that the Software contains trade secrets and to protect them, Licensee may not decompile, reverse engineer, disassemble or otherwise reduce the Software to any human perceivable form except as permitted under applicable law. Licensee may not modify, sell, rent, lease, loan, distribute (except as expressly permitted by this License), or create derivative works based upon the Software in whole or in part.
- b. Notices. Licensee shall:

- c. Not remove any copyright notices or proprietary legends from the Software;
- d. Reproduce on all copies of the Software the copyright notice and any other proprietary legends that were
- e. Take reasonable steps to ensure that each user of the Software is aware of and complies and conditions of this Agreement.

3. Maintenance Software

Definitions

- i. (“Maintenance Software” includes both Upgrades and Updates to the REVIEW product only. It does not include upgrades or updates to any third party software including Blackboard unless this is specifically stated in writing at the time of purchase.
- ii. “Upgrade” means an improvement to an existing product through added functionality and/or enhanced performance. Upgrades are identified by a change in the number to the left or right of the decimal point in the product version number (e.g., an upgrade from REVIEW 3.0 to 4.0, or an upgrade from version 3.0 to 3.5).
- iii. “Update” means bug fix updates containing fixes, compatibility updates to maintain compliance with specifications, and standards compatibility updates to interoperate with specific standards. Updates are identified by a change in the number to the right of the “.” (e.g., REVIEW 3.0.5).
- iv. Maintenance License. As part of this Agreement, Licensee’s rights to use the Software will extend to the Maintenance Software that is commercially released during the term of this Agreement. AE will provide or make available to Licensee a master copy of such Maintenance Software commercially released during the term of this Agreement. “Maintenance Software”, “Upgrades” and “Updates” are available free of charge to Subscription Licensees.

4. Term & Termination.

- a. Initial Term. This Agreement will commence on the Contract Date and the Initial Term will end on the Expiry Date as per proposal in appendix 2 (“Initial Term”).
- b. Renewal Term(s). On expiry of this agreement a new agreement may be entered into between the company and the client. The agreement will be substantially in the same terms as this agreement. The client must give thirty (30) days notice in writing to cancel the contract renewal.
- c. Breach. If any breach of this Agreement by Licensee continues for more than ten (10) days after receipt of written notice of such breach by either party, either party may terminate this Agreement by written notice to Licensee, whereupon this Agreement and all rights granted to Licensee herein shall immediately cease and the REVIEW software solution will be activated. Breach of this Agreement includes, but is not limited to, Licensee’s failure to pay any license fees when due.
- d. Effect of Termination. Upon expiry or termination of this Agreement for any reason, all licenses under this Agreement are immediately terminated, and Licensee will cease all use, installation and copying of the Software. Any fees (including pre-paid fees) paid to AE under this Agreement are non-refundable upon expiry or termination of this Agreement.

5. Limited Warranty.

AE warrants for a period of ninety (90) days from the Contract Date that the Software as provided by AE will substantially conform to the published specifications for the Software available from AE. AE’s entire liability and Licensee’s sole and exclusive remedy for any breach of the foregoing limited



warranty will be, at AE's option, replacement of the media, or repair or replacement of the Software. No refunds are available

6. *Audit.*

No more than once per semester and during ordinary business hours (after giving reasonable advance notice) AE, or at either party's option, an independent third party reasonably acceptable to both parties, may audit Licensee and its records relating to its payment obligations under this Agreement for the purpose of confirming Licensee's compliance with this Agreement. At AE's request, Licensee will provide a knowledgeable employee to assist in such audit. If such audit reveals that Licensee has underpaid amounts owing to AE under this Agreement, Licensee will promptly pay AE such past due amounts. If the amount which Licensee has underpaid in any period exceeds ten percent (10%) or more of the amounts actually owed to AE for such period, Licensee will promptly reimburse AE for the direct out-of-pocket expenses incurred in conducting such audit.

7. *Terms and Conditions*

AE reserve the right to amend or change these terms and conditions at anytime with agreement from the Client. Changes will be posted to our website and an email notifying changes will be sent.

Appendix 1

Support Services & SLA

| Criticality | Availability | Response Time | Work-around or Fix | Resolution |
|---|---|--|--|--|
| Priority 1 - Severe: System down, eg: <ul style="list-style-type: none"> • No operation whatsoever • Most users affected | Business Hours Monday to Friday (excluding public holidays) | Within 4 working hours with a status report every day thereafter | Within 8 working hours | acidgreen to work until problem resolved |
| Priority 2 - Moderate: System critically impaired, eg: <ul style="list-style-type: none"> • Large number of users affected • Business critical systems non operational | Business Hours Monday to Friday (excluding public holidays) | Within 8 working hours with a status report every 2 days | Within 12 working hours | acidgreen to work until problem resolved |
| Priority 3, Minor: System largely operational, eg: <ul style="list-style-type: none"> • Individual or only a small number of users affected • No business critical systems affected | Business Hours Monday to Friday (excluding public holidays) | Within 12 working hours with a monthly status report | Within 1 week | acidgreen to use all reasonable efforts to identify the problem within ten (10) Working Days |
| Priority 4, Trivial: All users operating, eg: <ul style="list-style-type: none"> • Minor GUI spelling mistake / malfunction • New PDF document uploaded and linked | Business Hours Monday to Friday (excluding public holidays) | Within 1 day with a monthly status report | Best endeavours to updated within 2 weeks. | acidgreen to resolve the request within 1 month |

Appendix 2

Cost Table, Schedule & Payment conditions

Custom quote

License

Maintenance & Support

The Initial Term is 12 months from signing of the contract.

Payment required in advance to commence.

Appendix 3

| | | |
|----------------|---|---|
| Level 1 | Help Desk support and user assistance, where no technical experience is required. | how to use the system to add staff |
| Level 2 | Basic technical knowledge, changes made by support team. | Altering configuration settings |
| Level 3 | High level technical assistance, programming and QA. | Issues affecting multiple users, server issues, site failures, security impacts and new features. |