

Terms and Conditions (E-Learning)

Parties:

- (1) NORTHUMBRIA LEARNING LIMITED of 21 Ellison Place, Newcastle-upon-Tyne, NE1 8ST, Company number 4039149 (“us/we/our”)
- (2) Customer of Customer-Company (“you/your”)

1 Definitions

- 1.1 **“Confidential Information”** means any non-public information about a party, including, without limitation, the party’s business, customers, products, services, employees, finances, costs, practices, computer software programs and programming tools and their respective design, architecture, modules, interfaces, databases, capabilities and functionality, source code and object code, research and development efforts, marketing and distribution efforts, licensing, cross-licensing, and other information licensed or otherwise disclosed to by either party.
- 1.2 **“Intellectual Property”** means the know-how trade names, trade marks, design rights, copyright, logos, designs, symbols, insignia, drawings, plans, software, systems, and all other intellectual property rights available to us in relation to the Services or otherwise either now or in the future whether or not the same are registered or capable of registration.
- 1.3 **“Quote Form”** means a quote form issued by us to you, pursuant to a request for the Services by you which shall include the price, the period for which the Services will be available to use, the number of users permitted to access the Services, the delivery date and any Special Conditions.
- 1.4 **“Services”** means the services provided by us to you consisting of access to certain application software, and/or other information owned or licensed by us and/or our suppliers together with technical support, hosting, training and consultancy services specified and referred to in the relevant Quote Form and/or Works Statement.
- 1.5 **“Special Conditions”** means additional conditions of the Contract.
- 1.6 **“Works Statement”** means the work statement issued by us to you from time to time setting out details of the Services that form part of the Contract including (without limitation) details of training, technical support and consultancy services.

2 Provision of the Services

- 2.1 Subject to the terms and conditions of the Contract (hereinafter defined) we grant to you a non-exclusive, non-transferable license to access and use the Services. We reserve all rights in respect of the Services not expressly granted to you in the Contract.
- 2.2 We are not under any obligation to provide the Services until receipt of confirmation in writing of your acceptance of the Contract.
- 2.3 Where specified the license granted hereunder shall be subject to a maximum number of persons permitted to use the Services which if exceeded shall be considered a material breach of the Contract.
- 2.4 We shall use all reasonable endeavours to ensure that the Services are delivered in accordance with the delivery date specified in the relevant Quote Form and the relevant service level agreement.
- 2.5 Where necessary for the provision of the Services you agree to provide us with access to your premises and to provide suitable equipment and/or support necessary for the Services as reasonably requested by us.
- 2.6 You agree that you shall:
 - 2.6.1 notify us immediately if you become aware of any unauthorised use of all or any of the Services
 - 2.6.2 ensure that you have all necessary consents, permissions and licenses to make use of the Services
 - 2.6.3 ensure that information provided by us to you to access the Services (Account Information) is at all times kept confidential, used properly and not disclosed to unauthorised persons and if you have any reason to believe that the Account Information has become known to someone not authorised to use it or if the Account

information is being or is likely to be used in an unauthorised way or of any other breach of security you shall inform us immediately.

2.6.4 ensure that all communication that you provide us with is at all times true, current, accurate and complete and you shall promptly notify us of any such details and you acknowledge that we shall not be liable for any costs, damages or loss which you may suffer or incur as a result of your failure to notify us of such changes.

2.6.5 not use the Services or allow them to be used for the publication, linking to issue or display of any material which in the absolute discretion of us, may harm us or any of our clients or bring into disrepute or may call into question any action taken by us on your behalf

2.6.6 ensure that any text, information, images audio or video material (Content) used in relation to the Services does not infringe any applicable laws, regulations or third party rights (such as material which is obscene, indecent, pornographic, seditious, offensive defamatory, threatening, liable to incite racial hatred, menacing, blasphemous or in breach of any third party intellectual property rights) (Inappropriate Content).

2.7 You recognise that we have no control over or any obligation in respect of any Content that you use or that any third party uses in conjunction with the Services and shall only process the Content in accordance with your instructions from time to time unless it comes to our attention that Inappropriate Content is being used in conjunction with the Services where we shall remove that Inappropriate Content.

2.8 You agree to indemnify us against all damages, losses and expenses we may suffer howsoever caused arising as a result of any action or claim that the Content used in relation to the Services constitutes Inappropriate Content.

3 Scope of the Contract

3.1 These terms and conditions, service level agreement (where included) Quote Form, Work Statement and relevant Special Conditions shall govern and form part of every contract (the Contract) between us both for the provision of the Services and no other representation or covenant given by either party shall form part of the Contract unless agreed in writing by both parties that it shall form part of the Contract.

3.2 In the event of any inconsistency between these Terms and Conditions, the Service Level Agreement, Quote Form, Special Conditions and Works Statement the following order of precedence shall apply:

- 3.2.1 Special Conditions
- 3.2.2 These Terms and Conditions
- 3.2.3 Quote Form
- 3.2.4 service level agreement
- 3.2.5 Work Statement

4 Intellectual Property Rights

4.1 You agree that you will not in any way infringe or harm the Intellectual Property rights or the intellectual property rights of any third party and shall comply with all instructions from us in respect of your use of the Intellectual Property in order to maintain and protect our rights in the Intellectual Property.

4.2 You shall notify us as soon as you become aware of any suspected or actual infringement or harm to the Intellectual Property or any attempts to challenge our right to use the Intellectual Property and you shall provide us with such reasonable assistance as we shall require in defending any action in respect of the Intellectual Property.

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- 4.3 You shall not except to the extent permitted by law (and shall not permit any employee or other third party to) copy, modify, delete, reverse engineer, decompile, disassemble, translate, convert or apply any procedure or process to the Services and/or Intellectual Property without our express permission.
- 5 Charges and Payment**
- 5.1 All fees paid hereunder are non-refundable, except as provided for in the Contract and you shall pay us the fees for the provision of the Services without deduction, set off, abatement, or discount of any kind as set out in the relevant Quote Form.
- 5.2 All amounts payable under the Contract are exclusive of all sales, use, value-added, excise, property, withholding, expenses and other taxes and duties.
- 5.3 You shall reimburse us all travelling and other expenses reasonably incurred by us in the proper provision of the Services
- 5.4 Late payments shall automatically accrue interest calculated on a daily basis from the due date at a rate of 8% per annum above the base rate of Barclays Bank Plc, or if lower, such maximum rate as may be permitted by applicable law.
- 5.5 We reserve the right to withhold provision of the Services to you in the event that payment is not received within 14 days from the due date.
- 6 Maintenance**
- 6.1 You acknowledge that in order to ensure the best possible performance from the Services and/or in order to provide technical support pursuant to the Contract we may need to carry out maintenance and you agree to provide us with such assistance as we may reasonable require.
- 7 Confidentiality**
- 7.1 Each party undertakes that it will not divulge or communicate to any person except as may be required by law any Confidential Information and each of the parties shall use best endeavours to prevent the publication or disclosure of any Confidential Information.
- 8 Term and Termination**
- 8.1 The Contract shall continue in full force and effect until either expiration of all the Quote Forms or termination in accordance with this clause.
- 8.2 We may terminate the Contract forthwith without penalty:
- 8.2.1 if you commit any material breach of any term of the Contract and (in the case only of a breach capable of being remedied) it shall not have been remedied within 2 days of a written request to remedy the same; or
- 8.2.2 if you shall convene a meeting of your creditors or if a proposal shall be made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) your creditors is made or if you are unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986 or if a trustee receiver administrative receiver or similar officer is appointed in respect of all or any part of your business or assets or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction) in respect of your business.
- 8.3 Termination of the Contract pursuant to this clause shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.
- 8.4 Within 2 days of the termination of the Contract (howsoever and by whomsoever occasioned) you shall at our sole option either return, destroy or grant us access to all copies of documentation, data and/or our equipment in your possession or control and shall certify in writing to us that you have complied with your obligation as aforesaid.
- 8.5 Any incomplete Work Statement and/or Quote Form shall be terminated concurrently with the Contract. You shall pay a pro-rata portion of the Services that is incomplete at the time of termination and for which payments have not been made to us and we shall deliver to you copies of all such incomplete work for which payment has been made, unless any applicable license for such work has been terminated
- 8.6 Termination of the Contract shall not limit the remedies otherwise available to either party, including injunctive relief.
- 9 Warranties**
- 9.1 We warrant that we are authorised to license the use of the Services. All other warranties, representations and/or conditions express or implied are excluded to the fullest extent permitted by law.
- 10 Limitations of Liability**
- 10.1 You acknowledge and accept that all potential liabilities under the Contract are not within our control and that the operation and availability of the communications systems, including, without limitation, the telephone service, computer networks and the internet, used for accessing and interacting with the Services can be unpredictable and/or require maintenance, and may, from time to time, interfere with or prevent access to or operation of the Service. You further acknowledge that we aim to provide a low cost entry to the e-learning market which is only made possible due to the inclusion of the disclaimers and limitations set out in the Contract.
- 10.2 You accept as reasonable the limitation of liability in respect of the Contract to the fees paid or payable by you in accordance with any Quote Form currently in force.
- 10.3 This clause sets out our entire financial liability (including any liability arising due to acts or omissions of our employees, agents, and sub-contractors) to you in respect of:
- 10.3.1 any breach of the Contract by us, and
- 10.3.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 10.4 We shall not be liable to you for any indirect or consequential loss or damage (whether for loss of profits or otherwise), costs expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- 10.5 This clause does not affect claims in respect of death or personal injury caused by negligence and does not limit or exclude any liability for fraudulent misrepresentation.
- 11 Indemnity**
- 11.1 You undertake to indemnify us and hold us harmless (and our agents, sub-contractors, employees, directors and officers) against all proceedings, costs, liabilities, injury, loss or damage arising out of your (and a third party engaged by you) breach and/or negligent performance of the Contract.
- 12 Miscellaneous Terms**
- 12.1 Any dispute between us that we are unable to resolve within a reasonable time scale shall be referred to an arbitrator. If we cannot agree on the appointment of an arbitrator within a reasonable time period either party shall make an application to the President of the Chartered Institute of Arbitrators to appoint an arbitrator.
- 12.2 You shall not be entitled to assign the Contract or any rights pursuant to the Contract without our written consent.
- 12.3 Nothing in the Contract shall be deemed to make either party an agent, employee, partner of the other party. Neither party shall have the

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- authority to bind, commit, or otherwise obligate the other party in any manner whatsoever.
- 12.4 We may use your plain text name to list as a customer of us.
- 12.5 Any notice shall be given in writing
- 12.6 If any portion of the Contract is determined to be or becomes unenforceable or illegal, such portion shall be deemed eliminated and the remainder of the Contract shall remain in effect in accordance with its terms as modified by such deletion.
- 12.7 Definitions set forth in any part of these terms and conditions shall apply to all parts of the Contract unless expressly stated otherwise.
- 12.8 Neither party shall be considered in default with regard to performance of its obligations hereunder if performance of such obligations is prevented or delayed by force majeure or any cause beyond its reasonable control.
- 12.9 No term of the Contract shall be enforceable by a third party under the Contracts (Rights of Third Parties) Act 1999 with the exception of the University of Northumbria.
- 12.10 This Agreement shall be governed by the laws of England and the parties submit to the jurisdiction of the English courts.