

Master Service Agreement

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These Terms and Conditions apply to all Services You purchase from Us and are deemed to be incorporated in each Order Form signed by the parties upon signature of each Order Form.

The parties hereby agree as follows:

1. DEFINITIONS

“Affiliate” means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

“Agreement” means these terms and conditions together with the Order Form, the DPA, the SLA, the Privacy Policy and any other documents referred to herein.

“Business Day” means Monday to Friday excluding any national holiday in the UK.

“Business Hours” 9 a.m. to 5 p. m. (local UK time) on each Business Day.

“Confidential Information” means any and all information in any form whatsoever relating to either party, or their business, prospective business, finances, technical process, computer software (both source code and object code) and IPRs or compilations of two or more items of such information, whether or not each individual item is in itself confidential, which comes into a party’s possession as a result of this Agreement or provision of the Services, and which the party regards, or could reasonably be expected to regard, as confidential and any and all information which has been or may be derived or obtained from any such information.

“Consequential Loss” means pure economic loss, special loss, losses incurred by any Client or other third party, loss of profits (whether categorised as direct or indirect), losses arising from business interruption, loss of business revenue, goodwill or anticipated savings, losses whether or not occurring in the normal course of business, costs of procuring substitute goods, products or services or wasted management or staff time.

“DPA” means the data processing agreement published at essentialskillz.com/docs, as amended from time to time.

“Effective Date” means the date on which this Agreement commences as set out in the Order Form.

“Feedback” means feedback, innovations or suggestions created by the You or Users regarding the attributes, performance or features of the Services.

“Fees” means the fees set out in the Order Form payable by You during the Term.

“Force Majeure” means anything outside the reasonable control of a party, including but not limited to acts of God, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, war, rebellion, insurrection, sabotage, epidemic, quarantine restriction, labour dispute, labour shortage, power shortage (including where We cease to be entitled to access the Internet for whatever reason, server crashes) transportation embargo, failure or delay in transportation, any act or omission (including laws, regulations, disapprovals or failure to approve) of any government or government agency.

“Illegal Content” means any data or content which is defamatory or constitutes a breach of the IPR or legal rights of any third party.

“Implementation Fee” means the implementation fee set out in the Order Form for the implementation of the Services.

“Initial Term” means a period of 12 to 60 months, as specified in each Order Form, starting from the Effective Date.

“IPR” means all copyrights, patents, utility models, trademarks, service marks, registered designs, moral rights, design rights (whether registered or unregistered), technical information, know-how, database rights, semiconductor topography rights, business names and logos, computer data, generic rights, proprietary information rights and all other similar proprietary rights (and all applications and rights to apply for registration or protection of any of the foregoing) as may exist anywhere in the world. “Malicious Code” means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

“Order Form” means any order form entered into between You and Us from time to time.

“Privacy Policy” means the Privacy Policy published at essentialskillz.com/docs, as amended from time to time.

“Renewal Term” means a period of 12 months.

“Services” means the online, web-based applications and solutions provided by Us and online content that have been purchased by You as set out in an Order Form but excluding all Third Party Content.

“SLA” means the service level agreement published at essentialskillz.com/docs, as amended from time to time.

“Statistical Data” means aggregated, anonymised data derived from the You or User’s use of the Services which does not include any personal data or Confidential Information.

“Terms and Conditions” means these terms and conditions.

“Term” means the Initial Term plus and Renewal Term(s) together.

“Third-Party Content” means content provided by third parties that interoperate with the Services, and are identified as third-party content.

“Users” means individuals who are authorized by You to use the Services, for whom subscriptions to a Service have been purchased, and who have been supplied user identifications and passwords by You (or by Us at Your request). Users may include but are not limited to Your employees, consultants, contractors and agents, or third parties with which You transact business.

“We,” “Us” or “Our” means RiskWize Limited a company incorporated in Ireland, (registration No. 348119) located at The Hub, Galway Technology Park, Parkmore, Galway, Ireland.

“You” or “Your” means the company or other legal entity named in the Order Form.

“Your Data” means all data imported into the Services by You or Users for the purpose of using the Services or facilitating Your use or a User’s use of the Services.

2. SERVICES

2.1. Provision of Services.

You engage Us and We agree to provide the Services to You in accordance with the terms of this Agreement from the Effective Date for the Term of this Agreement. If You wish to purchase additional Services after the Effective Date, such

Services shall be set out in one or more additional Order Forms, which will be signed by both parties and incorporated into this Agreement. 2.2. User Subscriptions.

Unless otherwise specified in the applicable Order Form: (i) Services are purchased as User subscriptions and may be accessed by no more than the specified number of Users; (ii) additional User subscriptions may be added during the Term at the same pricing as that for the current Initial Term or Renewal Term (as applicable), prorated for the remainder of the subscription term in effect at the time the additional User subscriptions are added; and (iii) the added User subscriptions shall terminate on the same date as the existing subscriptions. User subscriptions are for designated Users and cannot be shared or used by more than one User but may be reassigned to new Users replacing former Users who are no longer employed by You or your Affiliates.

2.3. Your Editing of Services

Where editing permissions are provided, You undertake to ensure that only persons who are suitably qualified professionals, knowledgeable in both the subject-matter of the module, test or risk assessment prior to editing and any subject matter to be dealt with by the content after editing, are permitted to perform editing operations and that any such person has the appropriate language skills (where a module is written in a language other than English). Some courses are approved/accredited/assured by third party organisations, for example RoSPA. Editing, adding to, or in any way modifying one of these courses invalidates the approval/accreditation/assurance and it is Your responsibility to ensure that any edits are accurate and correct.

3. USE OF THE SERVICES

3.1. Licence

Subject to Your payment of the Fees, You and Your Affiliates are granted a non-exclusive, non-transferable licence to permit Users to use Services (including any of Our associated IPR and Confidential Information) from the Effective Date for the Term for Your internal business operations. Such licence permits You to make cache copies of software or other information necessary for You and Your Affiliates to receive the Services via the Internet. Where open source software is used as part of the Services, such software use will be subject to the terms of the open source licences. You and Your Affiliates have no right to modify, adapt, or translate the Services or create derivative works from the Services. No additional implied rights are granted beyond those specifically mentioned in this clause 3.1.

3.2. No right to source code.

Notwithstanding Your statutory rights, nothing in this Agreement shall be construed to mean, by inference or otherwise, that You have any right to obtain source code for the software comprised within the Services and disassembly, decompilation or reverse engineering and other source code derivation of the software comprised within the Services is prohibited.

3.3. Restrictions on Use.

Unless otherwise specified in this Agreement, the Services are provided and may only be used in conjunction with your existing systems and applications in order to facilitate access to the Services solely to Users to enable Users to use the Services. You may not: (i) lease, loan, resell, assign, licence, distribute or otherwise permit access to the Services; (ii) make the Services available to anyone other than Users; (iii) use the Services to store or transmit Illegal Content; (iv) use the Services to store or transmit Malicious Code; (v) interfere with or disrupt the integrity or performance of the Services or Third Party Content contained therein; (vi) attempt to gain unauthorized access to the Services or their related systems or networks; or (vii) use the Services to provide ancillary services related to the Services.

3.4. Your Responsibilities.

You shall: (i) be responsible for Users' compliance with the terms of this Agreement; (ii) be solely responsible for the accuracy, quality, integrity, reliability and legality of Your Data and of the means by which You acquired Your Data; (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify Us promptly of any such unauthorized access or use; and (iv) use the Services only in accordance with applicable laws and government regulations.

3.5. Annual Subscriptions.

Where an Order Form includes an annual subscription ("Annual Subscription") for the Services each User has unlimited usage of the system and unlimited access to the courses and risk assessments subscribed to.

3.6. Pay Per Use Subscriptions

Where an Order Form includes a pay per use subscription, ("Pay-Per-Use Subscription") You must purchase Flexible Training Credits ("FTCs") in addition to paying an Annual Subscription for each User. FTCs are consumed when a User completes a course or risk assessment. The number of FTCs consumed will vary per course. FTCs must be purchased in advance and the number and cost of these shall be specified in the Order Form. All unused credits expire 12 months after the date of the Order Form in which they were purchased. No refunds will be paid for any unused credits.

3.7. Suspension of Services

We may suspend access to the Services, or portion thereof, at any time, if in Our sole reasonable discretion, the integrity or security of the Services is in danger of being compromised by Your acts or those of Your Affiliates or Users. We shall where possible give You 24 hours prior notice, before suspending access to the Services, giving specific details of Our reasons.

3.8. Competitors

You may not access the Services if You are Our direct competitor, except with Our prior written consent.

3.9. No monitoring

You may not access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

4. THIRD-PARTY PROVIDERS

4.1. Acquisition of Third-Party Products and Services.

Where any Third Party Content is included in an Order Form, all provision, implementation, customization and any other services related thereto including any exchange of data between You and any third-party provider, is solely between You and the applicable third-party provider. We shall not be liable for and neither do we warrant or support any Third Party Content, except as explicitly provided in an Order Form. No purchase of Third Party Content is required to use the Services.

5. FEES, INVOICING AND PAYMENT

5.1. Fees.

We shall invoice you the Fees set out in each Order Form. All invoices shall be issued and paid in the currency stated in the invoice. All fees exclude any Taxes (defined in clause 5.5 below) legally payable on the date of the invoice, which shall be payable in addition. Except as otherwise specified in an Order Form:(i) Fees are based on services purchased and not actual usage; (ii) payment obligations are non-cancellable and Fees paid are non-refundable; and (iii) the number of User subscriptions purchased cannot be decreased during the on the Initial Term or a Renewal Term of an Order Form. User subscription fees are based on 12 month periods that begin on the Effective Date of each Order Form. Fees remain fixed for the Initial Term of each Order Form.

5.2. Invoicing and Payment.

All Fees shall be invoiced annually in advance, unless stated otherwise in an Order Form. Unless otherwise stated in an Order Form, payment of all Fees is due within 30 days of the date of properly rendered, undisputed invoices and shall be without prejudice to any claims or rights which You may have against Us. If You believe that any invoice is incorrect, You must notify Us in writing within 14 days of the invoice date. Unless the Order Form specifies that the Services are provided on a one-off basis or specifies an alternative agreement in respect of Fee increases, the annual payment of Fees may be increased at an aggregate rate of up to 5% per annum. You may, by serving not less than 90 days' written notice to Us, cancel its subscription to the Services, cancellation to be effective on an anniversary of the end of the Initial Term and in that case will not be liable for the renewal payment of Fees. Failing such notice being given You shall become liable for the annual payment of Fees and, upon payment thereof, shall be entitled to continue using the Services until the next anniversary of the end of the Initial Term. If Fees are increased more than the amount stipulated in this clause or on the Order Form, You shall have 10 business days from the receipt of written notification to decide whether or not to renew and will inform Us in writing if You wish to cancel. Such cancellation will be deemed effective on the anniversary of the end of the Initial Term or on receipt thereof if the period expires after that anniversary in which case You shall not be obliged to pay for any use after such anniversary.

5.3. Late Payment.

Where payment of any undisputed Fee is not received by the payment due date, We may, without liability to You, disable Your password, account and access to all or part of the Services and We shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remains unpaid. We shall be entitled to charge interest on overdue Fees at the applicable statutory rate. We also reserve the right to recover costs and reasonable legal fees We incur in recovering overdue payments.

5.4. Payment Disputes.

We shall not exercise Our rights under clause 5.3 (Overdue Fee) if the applicable charges are under reasonable and good-faith dispute and You are cooperating diligently to resolve the dispute.

5.5. Taxes.

Unless otherwise stated, Our Fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). You are responsible for paying all Taxes associated with Your use of the Services. For clarity, each party is solely responsible for taxes assessable against it based on their own income, property and employees.

6. IPRs

6.1. Our IPRs.

Subject to the limited rights expressly granted hereunder, all rights, title and interest in and to the Services (save to the extent they include any of Your Data or IRS or any Third Party Content), including all related IPRs shall remain with Us and our licensors and subcontractors. No rights or ownership in the Services, IPRs or otherwise are transferred to You under this Agreement, other than as expressly set forth herein. You are not permitted to remove any proprietary marks or copyright notices from the Services.

6.2. Restrictions on Use of Our IPRs.

You shall not: (i) permit any third party to access the Services except as permitted herein or in an Order Form; (ii) copy, frame or mirror any part or content of the Services, other than copying or framing on Your own intranets or otherwise for Your own internal business purposes; (iii) access the Services in order to: (a) build a competitive product or service; or (b) copy any features, functions or graphics of the Services.

6.3. Equitable Relief.

You acknowledge that any breach or threatened breach of clause 6.2 of this Agreement will result in irreparable harm to Us for which damages would not be an adequate remedy, and therefore, in addition to Our rights and remedies otherwise available at law, We will be entitled to seek injunctive or other equitable relief, as appropriate. If We seek any equitable remedies, We will not be precluded or prevented from seeking remedies at law.

6.4. Ownership of Your Data.

The Customer shall retain sole ownership of all rights, title and interest in and to Your Data and Your pre-existing IPRs. You grant Us a non-exclusive, licence to use Your Data, Your IPRs and any third party owned item from the Effective Date for the Term to the extent required for the provision of the Services.

6.5. Feedback.

You and Your Affiliates assign all rights, title and interest in any Feedback to Us. If for any reason such assignment is ineffective, You or Your Affiliates shall grant Us a non-exclusive, perpetual, irrevocable, royalty free, worldwide right and licence to use, reproduce, disclose, sub-licence, distribute, modify and exploit such Feedback without restriction.

6.6. Statistical Data You grant Us the perpetual right to use Statistical Data and nothing in this Agreement shall be construed as prohibiting Us from using the Statistical Data for business and/or operating purposes, provided that We do not share with any third party Statistical Data which reveals the identity of the You, Your Affiliates of Users or their Confidential Information.

6.7. Technical Precautions.

We may take and maintain technical precautions to protect the Services from improper or unauthorised use, distribution or copying.

7. CONFIDENTIALITY

7.1. Scope of Confidential Information.

Each party may use the Confidential Information of the other only for the purposes of this Agreement. Each party must keep confidential all Confidential Information disclosed to it, except where the recipient of Confidential Information is required to disclose the Confidential Information by law to any regulatory, governmental or other authority with relevant powers to which either party is subject.

7.2. Obligation of Confidentiality

Except as otherwise permitted in writing by the disclosing party: (i) the receiving party shall use the same degree of care that it uses to protect the confidentiality of its own Confidential Information (but in no event less than reasonable care) not to disclose or use any Confidential Information of the disclosing party for any purpose outside the scope of this Agreement; and (ii) the receiving party shall limit access to Confidential Information of the disclosing party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements containing protections no less stringent than those herein.

7.3. Exclusions

The obligations of confidentiality under this Agreement do not extend to any information that: (i) is or becomes generally known to the public through any act or omission of the receiving party; (ii) is lawfully in the receiving party's possession prior to its disclosure by the disclosing party;; (iii) is lawfully disclosed by to the receiving party by a third party without breach of any obligation owed to the disclosing party; or (iv) was independently developed by the receiving party, which independent development can be shown by written evidence. Compelled Disclosure.

The receiving party may disclose Confidential Information of the disclosing where it is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body, provided the receiving party gives the disclosing party prior notice of such compelled disclosure (to the extent legally permitted) and provides reasonable assistance, at the disclosing party's cost, if the disclosing party wishes to contest the disclosure. 7.4. Termination.

Both parties agree to return (or destroy) all documents, materials or data containing Confidential Information to the disclosing party without delay upon completion of the Services or termination or expiry of this Agreement.

8. DATA PROTECTION

8.1. Compliance with Data Protection Law

Each party undertakes to comply with its obligations under relevant applicable data protection laws, principles and agreements.

8.2. Data Controller and Data Processor

To the extent that personal data is processed when You or Users access or use the Services, the parties acknowledge that We are a data processor and You are a data controller and the parties shall comply with their respective obligations under applicable data protection law and the terms of the DPA..

8.3. Breach of Data Protection Law

If a third party alleges infringement of its data protection rights, We shall be entitled to take measures necessary to prevent the infringement of a third party's rights from continuing.

8.4. Us as Data Controller

Where We collect and process personal data, as a data controller, when providing the Services to You and Users, such collection and processing shall be in accordance with the Privacy Policy.

9. WARRANTIES AND DISCLAIMERS

9.1. Mutual Warranties.

Each party represents and warrants that: (i) it has full corporate power and authority to enter into this Agreement and to perform the obligations required hereunder; and (ii) the execution and performance of its obligations under this Agreement does not violate or conflict with the terms of any other agreement to which it is a party and is in accordance with any applicable laws; (iii) it shall respect all applicable laws and regulations, governmental orders and court orders,

which relate to this Agreement; (iv) it will not add Malicious Code to the Services in particular when uploading Third Party Content; (v) it will ensure that all Third Party Content it uploads is checked for all known computer virus, malware and spyware prior to upload.

9.2. Our Warranties.

We represent and warrant to You that: (i) we have the right to licence the Services to You; (ii) the Services shall be performed with reasonable skill and care, in a professional manner in accordance with good industry practice; and (iii) the Services will be provided in accordance with the SLA. 9.3. Breach of warranty under clause 9.2(iv)

If there is a breach of this warranty, We shall use reasonable commercial endeavours, to correct any material defect or to replace the defective Services. Notwithstanding the aforesaid, We shall only be obliged to remedy any material defect if: (i) You notify Us in writing immediately upon discovering the defect; and (ii) following Our examination of the Services, it is established that such a defect exists.

9.4. Exclusions from Our Warranties

The warranties in clauses 9.2 and 9.3 above inclusive shall not cover deficiencies or damages relating to: (i) any Third Party Content or third party components not provided by Us; or (ii) any third party provided connectivity necessary for the provision or use of Services; or (iii) compliance with third party software or products, any third party programmes or data used in combination with the Services except as set out explicitly in an Order Form; or (iv) a failure of the Services caused by the use or operation of the Services with an application or in an environment other than that set out in the Order Form; or (v) modifications made to the Services not carried out by Us.

9.5. No warranty

No warranty is made regarding: (i) the results You can achieve from using the Services; (ii) that the results achieved from using the Services will meet the needs of employees and local legislation; and (iii) that the Services will operate uninterrupted or error free. Your warranties

You represent and warrant to Us that: (i) You rightfully owns the necessary user rights, copyrights and ancillary copyrights and permits required for it to fulfil its obligations under this Agreement; (ii) You, Your Affiliates and Users shall maintain reasonable security measures (as may change over time) covering, without limitation, confidentiality, authenticity and integrity to ensure that the access to Services granted under this Agreement is limited as set out under this Agreement. In particular that You, Affiliates and Users shall treat any identification, password or username or other security device for use of the Services with due diligence and care and take all necessary steps to ensure that they are kept confidential, secure and are used properly and are not disclosed to unauthorised persons. Any breach of the above shall be immediately notified to Us in writing. You shall be liable for any breach of this Agreement by a User or Affiliate; (iii) You shall ensure that Your network and systems comply with the relevant specification provided by Us from time to time and that it is solely responsible for procuring and maintaining its network connections and telecommunications links from Your systems to Our data centres and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Your network connections or telecommunications links or caused by the Internet.

9.6. Third Party Content

All Third Party Content or information provided by Us via the Services, for example training materials is provided "as is". We provide no warranties in relation to such content or information and shall have no liability whatsoever to You, Your Affiliates or Users for its use or any reliance upon such content or information. 9.7. Disclaimer. Except as expressly stated in this Agreement, all warranties and conditions, whether express or implied by statute, common law or otherwise (including but not limited to satisfactory quality and fitness for purpose) are excluded to the fullest extent permitted by law.

9.8. High Risk Applications

You acknowledge that Services should not be used for high risk applications.

10. LIMITATION OF LIABILITY

10.1. Neither party excludes or limits its liability to the other for fraud, death or personal injury caused by their negligent act or omission or wilful misconduct or any other liability that cannot lawfully be excluded or limited.

10.2. Exclusion of Consequential Damages.

Neither party shall be liable for any Consequential Loss whether arising out of or related to this Agreement or in tort (including negligence or breach of statutory duty), misrepresentation or otherwise arising, even if the party was advised of the possibility of such damages.

10.3. Limitation of Liability.

Subject to clause 10.1 and 10.2, in no event shall either party's aggregate liability arising out of or related to this agreement, whether in contract, tort or under any other theory of liability: (i) for any indemnity of contribution exceed 500%, of the Fees paid by You to Us for the Services under the applicable Order Form, during the 12 month period prior to the date on which such claim arose; and (ii) for all other claims exceed 100% of the Fees paid by You to Us for the Services under the applicable Order Form, during the 12 month period prior to the date on which such claim arose. Where the duration of the Order Form has been less than 12 months, such shorter period shall apply. The foregoing shall not limit Your payment obligations under clause 5 (fees, invoicing and payment).

10.4. Liability for Affiliates and Users.

You shall be liable for any breaches of this Agreement caused by the acts, omissions or negligence of any Affiliates or Users who access the Services as if such acts, omissions or negligence had been committed by You.

10.5. Own Skill and Judgement

The parties acknowledge and agree that in entering into this Agreement, each had recourse to its own skill and judgement and have not relied on any representation made by the other, their employees or agents.

11. INDEMNITIES

11.1. Indemnification by Us.

We shall at Our own expense, defend or at Our own option settle any claim brought against You or Your Affiliates by a third party on the basis of: (i) an infringement of any IPR by the Services (excluding any claim deriving from any Third Party Content, Your Data or Your Affiliate or User provided item) and pay any final judgment entered against You on such issue or any settlement thereof, provided, that You: (i) promptly give Us written notice of such claim; (ii) give Us sole control of the defence and/or settlement of the claim (provided that We may not settle any claim unless the settlement unconditionally releases You of all liability); and (iii) fully cooperate and provide to Us all reasonable assistance in the defence or settlement, at Our expense; and (ii) breaches of data protection law or regulations or the terms of the DPA by Us or our Affiliates.

11.2. Obtain the Right to Use

If all or part of the Services becomes, or in Our opinion may become, the subject of a claim or suit of infringement under clause 11.1(i) above, We shall at Our own expense and sole discretion: (i) procure for You the right to continue to use the Service or the affected part thereof; (ii) replace the Services or affected part with another suitable non-infringing service or software; (iii) modify the Services or affected part to make the same non-infringing. We shall have no obligations under this clause to the extent that a claim is based on: (a) the combination, operation or use of the Services with other services or software not provided by Us if such infringement would have been avoided in the absence of such combination, operation or use; or (b) the use of the Services in any manner inconsistent with the terms of this Agreement; or (c) the negligence or wilful misconduct of You, Your Affiliates or a User.

11.3. Sole Remedy

Clauses 11.1 and 11.2 state Our sole and exclusive rights and remedies and Our entire obligations and liability for any claims made under these clauses.

11.4. Indemnification by You.

You shall defend, indemnify and hold Us and our employees, subcontractors, Affiliates and agents harmless from any costs, losses, fines, liabilities and expenses, including reasonable legal costs arising from any claim relating to or resulting directly or indirectly from: (i) any claimed infringement or breach by You, Your Affiliate or a User of any IPR with respect to use of the Services outside of the scope of this Agreement; (ii) use by Us of any of Your Data or Third Party Content, in particular storage or publication on the Internet of any Illegal Content; or (iii) access to or use of the Services by Your Affiliate, a User or third party; (iv) breaches of data protection law or regulations or the terms of the DPA by Your, Your Affiliate or a User; and (v) any breach of the terms of this Agreement by an Affiliate or User;

and We shall be entitled to take reasonable measures in order to prevent Illegal Content from being published on the Internet or breaches of third party rights from continuing.

11.5. Indemnity claims

Subject to clauses 11.1 to 11.4 inclusive, each party ("the first party") indemnifies and undertakes to keep indemnified the other party, its officers, servants and agents ("the second party") against any costs or expenses (including the cost of any settlement) arising out of any claim, action, proceedings, fines or demand that may be brought, made or prosecuted against the second party under any indemnity contained in clause 11. Such indemnity extends to and includes all costs, damages and expenses (including legal fees and expenses) reasonably incurred by the second party in defending any such action, proceeding claim or demand

12. TERM AND TERMINATION

12.1. Term of Agreement.

This Agreement forms a valid contract once We countersign the Order Form and shall commence on the Effective Date for the Initial Term. On expiry of the Initial Term, this Agreement shall automatically renew for successive Renewal Terms and continue until either party terminates the Agreement by giving the other at least 90 days notice in writing prior to the start of a Renewal Term. This Agreement continues until all User subscriptions set out in any Order Form have expired or been terminated.

12.2. Term of User Subscriptions.

User subscriptions commence on the Effective Date set out in the applicable Order Form and continue for the Initial Term specified in each Order Form. On expiry of the Initial Term, each User subscription shall automatically renew for successive Renewal Terms and continue until either party terminates the respective Order Form and User subscriptions by giving the other at least 90 days notice in writing prior to the start of a Renewal Term. The termination of an Order Form shall not result in termination of the Agreement until all Order Forms are terminated.

12.3. Termination for Cause.

A party may terminate this Agreement for cause: (i) upon giving 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period; or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors in any jurisdiction; or (iii) a Force Majeure event lasts more than 28 days.

12.4. Our right to terminate for Cause

We may terminate this Agreement or the provision of any Services with immediate effect if: (i) You have used or permitted use of Services other than in accordance with this Agreement; or (ii) We are prohibited under applicable law, or otherwise from providing the Services.

12.5. Refund or Payment upon Termination.

Where you terminate the Agreement or any Order Form pursuant to Our breach, We shall refund You any prepaid Fees covering the remainder of the term of all subscriptions after the effective date of termination of the applicable Order Form(s). Upon any termination for cause by Us, You shall pay any unpaid Fees covering the remainder of the then current Initial Term or Renewal Term (as applicable) of all Order Forms after the effective date of termination. In no event shall any termination relieve You of the obligation to pay any Fees payable to Us for the period prior to the effective date of termination.

12.6. Return of Your Data.

Upon request by You made within 30 days after the effective date of termination of and Order Form or this Agreement, We will make available to You for download a file of Your Data in comma separated value (.csv) format. After such 30-day period, We shall have no obligation to maintain or provide any of Your Data and shall thereafter, unless legally prohibited, delete all of Your Data in Our systems or otherwise in Our possession or under Our control, as set out in our DPA.

12.7. Licence Terminates

From the effective date of termination of the Agreement, We shall cease providing the Services to You and You must delete any of Our courses from Your systems, applications and all storage devices and provide written confirmation that this has been done by a duly authorised individual.

12.8. Surviving Provisions.

Section 5 (Fees, Invoicing and Payment), 6 (IPRs), 7 (Confidentiality), 8 (Data Protection), 9 (Warranties), 10 (Limitation of Liability), 11 (Indemnities), 12 (Term and Termination), 13 (Notices) and 14 (General Provisions) shall survive any termination or expiration of this Agreement and shall remain in force and effect.

13. NOTICES

13.1. General.

Amendments to, or notices to be sent under this Agreement, shall be in writing and shall be deemed to have been duly given if sent by registered post to a party at the address given for that party in this Agreement. Notices to Us should be addressed to our Chief Executive Officer. Notices to You shall be addressed to the system administrator designated by You for Your relevant Services account, and in the case of billing-related notices, to the relevant billing contact designated by You. Notwithstanding the aforesaid,

13.2. Notice by email

We may change or modify the terms of this Agreement, upon giving You 30 days notice via email. All changes shall be deemed to have been accepted by You unless You terminate the Agreement (or applicable Order Form) prior to the expiry of the 30 day period.

14. GENERAL PROVISIONS

14.1. Relationship of the Parties.

The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

14.2. No Third-Party Beneficiaries.

There are no third-party beneficiaries to this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999 and nothing contained in this Agreement is intended to be enforceable by a third party in any jurisdiction. 14.3. Waiver and Cumulative Remedies.

No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

14.4. Severability.

If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

14.5. Assignment.

Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Forms), without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganisation, or sale of all or substantially all of its assets not involving a direct competitor of the other party.

14.6. Entire Agreement.

This Agreement, including all exhibits and addenda hereto and all Order Forms, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. In the event of any inconsistency between the content of these Terms and Conditions, the Order Form, the SLA, the DPA and the Privacy Policy, the Order Form shall prevail followed by the Terms and Conditions, the SLA, the DPA and then the Privacy Policy. If after the Effective Date any subsequent order form is signed by the parties and added to this Agreement during the Term and there is a conflict between the terms of such subsequent order form, its attachments and the Terms and Conditions, the last signed order form shall prevail over the terms of any previous order form and its attachments, unless specifically stated otherwise in the subsequent order form

14.7. Governing Law and Jurisdiction.

This Agreement shall be governed by and construed in accordance with English law and each party agrees to submit to the exclusive jurisdiction of the courts of England over any claim or matter arising under or in connection with this Agreement or the legal relationships established by this Agreement and any proceedings in respect of any such claim or matter may be brought in such courts.

14.8. Notwithstanding the other provisions of this Agreement, We shall be entitled to bring an action in any jurisdiction where this relates to the protection of our IPRs or other rights.