



OES Online Terms and Conditions

1. Definitions and Interpretation

1. Definitions

Unless a contrary intention appears, capitalised terms used in this Agreement have the following meanings: **"Agreement"** the contract between OES and the Client for the Supply of services as set out in a Work Order and in accordance with these Conditions.

"Bribery Laws" means the Bribery Act 2010 and all other applicable UK legislation, regulations and codes in relation to bribery or corruption. **"Business Day"** means a day that is not a Saturday, Sunday or a public holiday in the place in which any relevant act is to be or may be done.

"Client" means the person, firm or entity that purchases Services from OES as set out in the Work Order.

"Client Materials" means the materials compiled and provided by the Client to OES.

"Commencement Date" means the date set out in the Work Order.

"Conditions" means these terms and conditions as amended from time to time.

"Data Protection Legislation" means:

- To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.
- To the extent the EU GDPR applies, the law of the law of the European Union or any member state of the European Union to which the Supplier is subject, which relates to the protection of personal data.

"Develop" means, in connection with a thing, to create, add, enhance, reduce, modify, adapt or prepare derivative works based on that thing.

"Fee" means the fees payable by the Client to OES as specified in a Work Order.

"Force Majeure" means a circumstance beyond the reasonable control of a party, which results in that party being unable to observe or perform on time an obligation under this Agreement (other than an obligation to pay money). Such circumstances include but are not limited to:

- (a) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster; and
- (a) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution.

"Intellectual Property Rights" or **"IPRs"** means all patents, copyright, moral rights, rights in inventions, registered designs, registered and unregistered trade marks, trade secrets, know-how, trade secrets, trade marks, service marks, trade names, design rights, rights in get-up, database rights, rights in data, semi-conductor chip topography rights, mask works, utility models, domain names, rights in computer software and rights in confidential information and all and all similar rights of whatever nature and, in each case: (i) whether registered or not, (ii) including any applications to protect or register such rights, (iii) including all renewals and extensions of such rights or applications, (iv) whether vested, contingent or future and (v) wherever existing.

"Law" means all applicable laws, statutes, regulations from time to time in force.

"Loss" means loss, damage, liability, charge, expense, outgoing or cost (including legal and other professional costs) of any nature or kind.

"OES" means Online Education Services Limited registered in England and Wales with company number 10942893 with its registered office at Charter Buildings, 9 Ashton Lane, Sale, Manchester M33 6WT.

"OES Materials" means all software, tools, documentation, reports, know-how, diagrams, data, procedures, processes, plans and other materials, irrespective of media or form, owned by or used by OES for the purposes of this Agreement, or provided by or on behalf of OES to Client in connection with this Agreement.

"Permitted Subcontractor" means:

- (a) a Related Entity of OES;
- (b) an individual engaged by OES as a contractor;
- (c) a contractor of OES specified in a Work Order as a Permitted Subcontractor; or
- (d) any other person that the parties agree is a Permitted Subcontractor.

"Related Entity" means means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity.

"Services" means the services set out in a Work Order.

"Term" means the term as set out in any Work Order.

"Work Order" means an agreed work order pursuant to clause

2. Interpretation



1. In this Agreement unless the context otherwise requires:
 - (a) the word “party” includes that party’s personal representatives, successors and permitted assigns;
 - (b) the singular includes the plural and vice versa;
 - (c) the words “include”, “includes”, “including”, “in particular” or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
 - (d) the headings are used for convenience only and do not affect the interpretation of this Agreement;
 - (e) a reference to ‘writing’ or ‘written’ includes any method of reproducing words in a legible and non-transitory form including email;
 - (f) the word “person” includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person’s personal representatives, successors and permitted assigns;
 - (g) the word “company” includes any company, corporation or other body corporate, wherever and however incorporated or established;
 - (h) the word “month” means a calendar month and the word “year” means 12 months;
 - (i) a reference to any Law includes any amendment, consolidation, modification, re-enactment or reprint of it or any Law replacing it, and all subordinate legislation made as at the date of this Agreement and from time to time under that legislation. A reference to a specified section, clause, paragraph, schedule or item of any Law means a reference to the equivalent section, clause, paragraph, schedule or item of the Law which is for the time being in force.

2. Services

1. Delivery of Services and Work Orders

2. The Work Order constitutes an offer by the Client to purchase Services in accordance with these Conditions.
3. The Order shall only be deemed to be accepted when OES issues written acceptance of the Work Order or signs the relevant Work Order at which point and on which date the Agreement shall come into existence
4. Any samples, drawings, descriptive matter or advertising issued by OES, and any descriptions or illustrations contained in OES’s catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Agreement or have any contractual force.
5. These Conditions apply to the Agreement to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
6. OES shall supply the Services to the Client in accordance with the Work Order in all material respects.
7. OES shall use all reasonable endeavours to meet any performance dates specified in a Work Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
8. OES reserves the right to amend the Work Order if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and OES shall notify the Client in any such event.
9. The Services will be provided by OES using reasonable care and skill.
10. OES agrees to provide the Services under this Agreement using suitably qualified staff and in a professional manner.

3. Intellectual Property

1. Client Materials

1. Client Materials remain the property of Client (or its licensor).
2. Nothing in this Agreement assigns any Intellectual Property Rights in Client Materials to OES.

2. OES Materials

1. OES Materials remain the property of OES (or its licensor).
2. Nothing in this Agreement assigns any Intellectual Property Rights in OES Materials to Client.

3. Licences to use Client Materials

1. Client hereby grants OES a non-exclusive, royalty free, irrevocable licence to Use and Develop the Client Materials during the Term, solely for the purposes of providing the Services, and exercising its rights and fulfilling its obligations under this Agreement (including those described in any Work Orders).
2. OES may grant a sublicense of the rights granted under clause 3.3.1 to any Permitted Subcontractor of OES.

4. Representations and warranties



1. Client represents and warrants that it is the owner or authorised licensor of the Client Materials and the Intellectual Property Rights in the Client Materials, and that it is entitled to grant the licences granted by it in clause 3.3.
 2. Client warrants that the Use and Development of the Client Materials by OES in accordance with clause 3.3 will not infringe the Intellectual Property Rights or any other rights of a third party.
 3. OES warrants that it is the owner or authorised licensor of the OES Materials.
5. **Defence and indemnity obligations**
- Client defence and indemnity obligations**
1. Subject to the OES' compliance with clause 3.5.3, Client must, and OES must allow Client to, defend OES from and against any third party demand, claim or action which could result in a breach of the warranties in clause 3.4.1 or clause 3.4.2 (each a "Client IP Claim").
 2. Client indemnifies OES against any Loss (including legal fees on a full indemnity basis), incurred or awarded against the OES as a result of a Client IP Claim.
 3. OES agrees that:
 - (a) it will, as soon as reasonably practicable, notify Client in writing of any known or reasonably suspected Client IP Claim; and
 - (b) it will not make any admission of liability in relation to or agree to any settlement or compromise of that Client IP Claim without the prior written consent of Client (which must not be unreasonably withheld or delayed).
 4. Subject to clause 3.5.6, Client will, at Client's expense, diligently conduct all negotiations, proceedings and litigation to settle a Client IP Claim or litigation arising from a Client IP Claim.
 5. OES will, at Client's expense, give Client all reasonable assistance in connection with negotiations and litigation to settle a Client IP Claim.
 6. Client must not agree to any settlement or compromise of an IP Claim without the prior written consent of OES if that settlement or compromise would:
 - (a) result in an admission of liability by OES; or
 - (b) require OES to do or refrain from doing anything (other than ceasing to use the relevant material the subject of the IP Claim).
 7. Clauses 3.5.1 and 3.5.2 will not apply to an IP Claim to the extent that the claim has arisen directly from use by OES or any OES subcontractor (not under Client's control or responsibility) or modification of the Client Materials made by OES or any third party (not under Client's control or responsibility) other than in accordance with this Agreement.
 8. If an IP Claim is made, or in the reasonable opinion of OES is likely to be made, in addition to its other obligations under clause 3.5, Client must promptly either:
 - (a) ensure that OES and OES' subcontractors have the right to continue to Use and Develop the infringing Client Materials as permitted by and for the purposes of this Agreement; or
 - (b) modify or replace the infringing Client Materials to avoid the infringement or alleged infringement.
- OES defence and indemnity obligations**
9. Subject to the Client's compliance with clause 3.5.11, OES must, and the Client must allow OES to, defend the Client from and against any third party demand, claim or action which could result in a breach of the warranty in clause 3.4.3 (an "OES IP Claim").
 10. OES indemnifies Client against any Loss (including legal fees on a full indemnity basis), incurred or awarded against the Client as a result of an OES IP Claim.
 11. Client agrees that:
 - (a) it will, as soon as reasonably practicable, notify OES in writing of any known or reasonably suspected OES IP Claim; and
 - (b) it will not make any admission of liability in relation to or agree to any settlement or compromise of that OES IP Claim without the prior written consent of OES (which must not be unreasonably withheld or delayed).
 12. Subject to clause 3.5.14, OES will, at OES' expense, diligently conduct all negotiations, proceedings and litigation to settle an OES IP Claim or litigation arising from an OES IP Claim.
 13. Client will, at OES' expense, give OES all reasonable assistance in connection with negotiations and litigation to settle an OES IP Claim.
 14. OES must not agree to any settlement or compromise of an OES IP Claim without the prior written consent of the Client if that settlement or compromise would:
 - (a) result in an admission of liability by the Client; or



(b) require the Client to do or refrain from doing anything (other than ceasing to use the relevant material the subject of the OES IP Claim).

15. Clauses 3.5.9 and 3.5.10 will not apply to an OES IP Claim to the extent that the claim has arisen directly from use by the Client or any third party (not under OES' control or responsibility) or modification of the OES Material's made by the Client or any third party (not under OES' control or responsibility) other than in accordance with this Agreement.

16. If an OES IP Claim is made, or in the reasonable opinion of the Client, is likely to be made, in addition to its other obligations under clause 3.5, OES must promptly either:

(a) ensure that Client has the right to continue to use the infringing OES Materials as permitted by and for the purposes of this Agreement; or

(b) modify or replace the infringing OES Materials to avoid the infringement or alleged infringement.

6. **Moral rights**

1. Each party shall use reasonable endeavours to procure written waivers, from all of the authors of any materials that are created under this Agreement, of their moral rights arising under the Copyright, Designs and Patents Act 1988 in relation to such materials and, so far as is legally possible, any broadly equivalent rights they may have in any territory of the world.

7. **Infringement**

1. If a party becomes aware of:

(a) any infringement or suspected infringement by a third party of any of the other party's Intellectual Property Rights; and/or

(b) any challenge to the validity of ownership of the other party's Intellectual Property Rights, it agrees to notify the other party in writing and within two Business Days of becoming aware.

4. **Fees**

Payment of Fees

1. Client must pay the Fees at the times and in the manner set out in the relevant Work Order or as otherwise provided in this Agreement.
2. All amounts stated are exclusive of VAT which will be charged at the prevailing rate. Client shall, following the receipt of a valid VAT invoice, pay to OES a sum equal to the VAT chargeable in respect of the provision.
3. Unless otherwise specified in a Work Order, Client must pay all Fees within 30 days of date of a valid VAT invoice.
4. If there is a genuine dispute as to whether the whole or part of an invoice for Fees submitted by OES is payable, Client must pay the undisputed amount in the invoice by the date the payment is due and notify Supplier in writing within 10 Business Days after receipt of the invoice of the reasons for the dispute in relation to the balance owing under the invoice. The parties will work together in good faith to resolve the dispute as quickly as possible.

5. **Warranties**

Warranties

Each party represents and warrants to the other party that:

1. it has full capacity and authority to enter into and to perform this Agreement;
2. it will comply with all Laws applicable to it in relation to this Agreement;
3. it will co-operate with the other party and will take all reasonable action as is necessary for the efficient transmission of information and instructions and to enable each party to fulfil its obligations under this Agreement and to benefit from its terms;
4. it has and will continue to hold all necessary regulatory approvals from the relevant regulatory bodies necessary to perform its obligations under this Agreement;
5. allocate reasonable and appropriate resources, including suitably qualified personnel, sufficient for its due and proper performance of its responsibilities under this Agreement;
6. there are no actions, suits or proceedings or regulatory investigations pending or, to the party's knowledge, threatened against or affecting that party before any court or administrative body or arbitration tribunal that might affect the ability of the party to meet and carry out its obligations under this Agreement;
7. it is of sound financial standing and is not aware of any circumstances which may adversely affect that financial standing in the future; and
8. once the Work Order is duly signed, this Agreement will constitute legal, valid and binding obligations.

6. **Limitation of liability**

1. To the extent permitted by Law, notwithstanding any other provision of this Agreement, neither party is liable to the other party for any indirect, punitive, special, incidental or consequential Loss in connection with or arising out of this Agreement (including for loss of profits, use, data, or other economic advantage), however it arises



(including under an indemnity), and even if that party has been previously advised of the possibility of such damage.

2. To the extent permitted by Law, subject to clauses 6.1.3 and 6.1.4 but otherwise notwithstanding any other provision of this Agreement the aggregate liability of each party for any Loss sustained by the other party in connection with this Agreement and in connection with any Work Order is limited to an amount equal to the Fees paid to OES by the Client under that Work Order in the 12 months preceding the most recent claim determined by reference to the date the claim arose.
3. The limitation of liability set out in clause 6.1.2 does not apply to Client's liability to pay any Fees.
4. The limitation of liability set out in clause 6.1.2 does not apply to any indemnities in this Agreement.

7. Confidentiality

1. We each undertake that we will not at any time during the Agreement, and for a period of five years after termination of the Agreement, disclose to any person any confidential information concerning one another's business, affairs, customers, clients or suppliers, except as permitted by clause 7.2.
2. We each may disclose the other's confidential information:
 1. to such of our respective employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of exercising our respective rights or carrying out our respective obligations under the Contract. We will each ensure that such employees, officers, representatives, subcontractors or advisers comply with this clause 7; and
 2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

8. Data protection

Each party must comply with its obligations under Data Protection Legislation.

9. Term and termination

Termination

1. Without affecting any other right or remedy available to it, either party may terminate the Agreement by giving the other party 3 months' written notice.
2. Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:
 - (a) the other party commits a material breach of any term of the Agreement and (if such a breach is remediable) fails to remedy that breach within 10 Business Days of that party being notified in writing to do so;
 - (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy.
3. Without affecting any other right or remedy available to it, OES may terminate the Agreement with immediate effect by giving written notice to the Client if:
 - (a) the Client fails to pay any amount due under the Agreement on the due date for payment; or
 - (b) there is a change of control of the Client.
4. Without affecting any other right or remedy available to it, OES may suspend the supply of Services under the Agreement or any other contract between the Client and OES if the Client fails to pay any amount due under the Agreement on the due date for payment, the Client becomes subject to any of the events listed in clause 9.2(b) to clause 9.2(d), or OES reasonably believes that the Client is about to become subject to any of them.
5. On termination of the Agreement:
 - (a) the Client shall immediately pay to OES all of OES's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, OES shall submit an invoice, which shall be payable by the Client immediately on receipt;
 - (b) the Client shall return all of OES Materials and any Deliverables which have not been fully paid for. If the Client fails to do so, then OES may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Agreement.



6. Termination or expiry of the Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.
7. Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Agreement shall remain in full force and effect.

10. Subcontractors

1. OES may engage Permitted Subcontractors as subcontractors for the performance of its obligations under this Agreement, provided that OES remains responsible for meeting its obligations under this Agreement.

11. Anti-bribery

1. Compliance with Bribery Laws

Each party shall comply with applicable Bribery Laws, including ensuring that it has in place adequate procedures to ensure compliance with the Bribery Laws and use all reasonable endeavours to ensure that it complies with any internal bribery policies relating to prevention of bribery and corruption (as updated from time to time), and each shall use all reasonable endeavours to ensure that:

1. all of that party's personnel
2. all others associated with that party, and
3. all of that party's subcontractors, involved in performing the Services or with this Agreement so comply. The expressions 'adequate procedures' and 'associated' shall be construed in accordance with the Bribery Act 2010 and documents published under it.

2. Bribery Act 2010

Without limiting clause 11.1, neither party shall make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and will implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.

12. Modern Slavery

1. Modern Slavery Act

OES undertakes, warrants and represents that:

1. neither OES nor any of its officers, employees, agents or subcontractors has:
 - (a) committed an offence under the Modern Slavery Act 2015 ("MSA Offence"); or
 - (b) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
 - (c) become aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;
2. it shall comply with the Modern Slavery Act 2015; and
3. it shall notify Client immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of its obligations under clause 12. Any notice under this clause 12.1.3 shall set out full details of the circumstances concerning the breach or potential breach of OES' obligations.

13. Force Majeure

1. No liability

Neither party shall be liable for any delay or failure to perform its obligations under this Agreement if such delay is caused by Force Majeure.

2. Suspension of obligations

If a delay or failure of a party to perform its obligations is caused by Force Majeure, the performance of that party's obligations will be suspended for the duration of the Force Majeure.

3. Termination

If a delay or failure by a party to perform its obligations caused by Force Majeure exceeds 30 days, the other party may immediately terminate this Agreement by notice in writing to the other party.

14. Notices

1. Any notice or other communication given under or in connection with the Agreement must be in writing and be delivered personally, sent by pre-paid first class post or other next working day delivery service, or email.
2. A notice or other communication is deemed to have been received:
 1. if delivered personally, on signature of a delivery receipt or at the time the notice is left at the proper address;
 2. if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second working day after posting; or



3. if sent by email, at 9.00 am the next working day after transmission.
3. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an email, that such email was sent to the specified email address of the addressee.
4. The provisions of this clause will not apply to the service of any proceedings or other documents in any legal action.

15. General

1. Entire agreement

1. Each of the parties agrees that this Agreement and any documents entered into pursuant to it constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter. No purchase order or similar document issued by or on behalf of Client in relation to this Agreement (except a variation agreed by the parties under clause 15.6) will vary or form part of this Agreement or any Work Order.
2. Each of the parties acknowledges that it has not entered into this Agreement or any documents entered into pursuant to it in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in this Agreement or any documents entered into pursuant to it. Each of the parties shall not have any claim for innocent or negligent misrepresentation on the basis of any statement in this Agreement.
3. Nothing in this Agreement purports to limit or exclude any liability for fraud.

2. Further assurance

Each party shall at the request of the other, and at the cost of the requesting party, do all acts and execute all documents which are necessary to give full effect to this Agreement.

3. Relationship of parties

The parties are independent persons and are not partners, principal and agent or employer and employee, and this Agreement does not establish any joint venture between them, other than the contractual relationship expressly provided for in it. Each party shall not have, nor shall represent that it has, any authority to make any commitment on the other party's behalf.

4. Assignment

Each party shall not (without the others' prior written consent) assign, novate, hold on trust, subcontract or encumber any right or obligation under this Agreement, in whole or in part.

5. Waiver

1. No failure, delay or omission by any party in exercising any right, power or remedy provided by law or under this Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.
2. No single or partial exercise of any right, power or remedy provided by law or under this Agreement shall prevent any future exercise of it or the exercise of any other right, power or remedy.
3. A waiver of any term, provision, condition or breach of this Agreement shall only be effective if given in writing and signed by the waiving party, and then only in the instance and for the purpose for which it is given.

6. Variations

No variation of this Agreement shall be valid or effective unless it is in writing, refers to this Agreement and is duly signed or executed by, or on behalf of, each party.

7. Cumulative rights

The rights and remedies provided for in this Agreement are cumulative with, and not exclusive of, any rights or remedies otherwise provided by law or in equity. No exercise by a party of any one right or remedy shall operate so as to hinder or prevent the exercise by it of any other right or remedy.

8. Third party rights

Except as expressly provided for in this Agreement, a person who is not a party to this Agreement shall not have any rights under the Agreements (Rights of Third Parties) Act 1999 to enforce any of the provisions of this Agreement. The parties shall not, however, be required to notify or obtain the consent of any third party in order to rescind or vary this Agreement.

9. Severance

1. If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of this Agreement shall not be affected.



2. If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

10. Indemnities

The indemnities in this Agreement are continuing obligations, independent of the other obligations of the parties under this Agreement and continue after this Agreement ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this Agreement.

11. Governing law and jurisdiction

1. This Agreement and any dispute or claim arising out of, or in connection with it, its subject matter or its formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England.
2. The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this Agreement, its subject matter or its formation (including non-contractual disputes or claims).