



OMNIPLEX (GROUP) LIMITED TERMS AND CONDITIONS FOR:

Digital Learning Content Services

OMNIPLEX (GROUP) LIMITED

MAY 2024



OMNIPLEX – TERMS AND CONDITIONS

TERMS AGREED

1. Definitions and interpretation

1.1 In this Terms and Conditions, the following terms have the following meanings:

"Adequacy Decision"	a finding under Article 25(2) of the Data Protection Directive that a country or territory ensures an adequate level of protection within the meaning of Article 25 of the Data Protection Directive, while such finding remains in force pursuant to Article 45(9) of the GDPR, or (as applicable) a finding under Article 45(1) of the GDPR or the UK GDPR that a country, a territory or one or more specified sectors within that country, or the international organisation in question ensures an adequate level of protection within the meaning of Article 45 of the GDPR or (as applicable) the UK GDPR;
"Additional Product Terms"	means an appendix to these Terms and Conditions in which product or service specific terms supplement these Terms and Conditions;
"Agreement"	shall mean the Order Form, these Terms and Conditions, any Additional Product Terms relevant to the specific product which the Customer is purchasing, any other appendix and (if applicable) any Statement of Work made pursuant to the Agreement;
"Applicable Law"	any and all laws, regulations and industry standards or guidance (including any applicable British Standard) and any applicable and binding judgment of a relevant court of law in each case which apply in England;
"Authorised Users"	means the Customer Personnel authorised by the Customer to receive the relevant Services. The number of the Authorised Users who shall receive the relevant Services is set out in the Order Form. For some Services, the definition of Authorised User will be different, and this will be apparent in the Additional Product Terms for particular Services;
"Background IPR"	any and all IPRs that are owned by or licensed to either party and which are or have been developed independently of this Agreement (whether prior to the Commencement Date or otherwise);
"Business Day"	09:00 to 17:00 Monday to Friday in the United Kingdom, excluding Bank Holidays in England and Wales;
"Charges"	the charges for the Services payable in accordance with clause 8 and the Order Form;

"Commencement Date"	the date the Order Form is signed;
"Confidential Information"	any and all know-how, documentation and information, whether commercial, financial, technical, operational or otherwise, relating to the business, affairs, customers, suppliers, employees, affiliates, products, software, relevant Third Party Software, Customer Materials, Customer Data, Customer Personal Data and/or methods of Omniplex or Customer and disclosed to or otherwise obtained by the other party in connection with this Agreement;
"Controller"	has the meaning given in the UK GDPR;
"Customer Data"	any data (including any Personal Data relating to the staff, customers or suppliers of the Customer and/or individuals who receive Deliverables as part of the Services), documents, text, drawings, diagrams, images, videos, sounds (together with any database made up of any of those) embodied in any media that are supplied to Omniplex by or on behalf of the Customer, or which Omniplex is required to process, store or transmit pursuant to this Agreement from time to time;
"Customer IT Systems"	the IT systems (including but not limited to devices, software and/or applications) used by the Customer from time to time;
"Customer Materials"	has the meaning given in the Additional Product Terms;
"Customer Personal Data"	The personal data specified as such in the Additional Product Terms and/or relevant Statement of Work;
"Customer Personnel"	the Customer, its employees, personnel, agents and contractors who are in receipt of the relevant Services and/or product;
"Customer Premises"	the premises from which the Customer operates from time to time;
"Data Processing Purpose"	the services described in the Additional Product Terms and/or relevant Statement of Work;
"Data Protection Directive"	Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
"Data Protection Laws"	the Data Protection Act 2018, the UK GDPR, GDPR and any relevant law implemented as a result of GDPR;
"Data Subject"	has the meaning given in the UK GDPR;

"Deliverables"	has the meaning given in the relevant Statement of Work;
"Delivery Date"	shall mean the relevant delivery dates as set out in the relevant Statement of Work;
"Documentation"	the documentation made available to the Customer by Omniplex from time to time which sets out a description of the Services, user instructions for the Services and/or the relevant Third Party Software;
"EEA"	the European Economic Area from time to time;
"End User Licence Agreement"	means the product or service specific end user licence terms which regulates end users' access to and use of the product or service, as referred to in the Additional Product Terms;
"GDPR"	Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data;
"ICO"	the United Kingdom's Information Commissioner's Office (or any equivalent successor body that may be appointed from time to time);
"Initial Term"	has the meaning given to it in the Order Form;
"IPRs"	patents, rights to inventions, copyright and neighbouring and related rights, know-how, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
Liability	means all liability in contract, tort (including negligence), breach of statutory duty, misrepresentation (whether innocent or negligent), restitution or otherwise, arising under or in connection with this Agreement. "Liable" shall be construed accordingly;
Losses	means all damages, losses, liabilities, claims, actions, costs, expenses (including reasonable fees and disbursements for legal or professional services), proceedings, judgments, consensual settlements,

	penalties, fines, demands, interest and charges whether arising under statute, contract or at common law;
"Non-adequate Country"	a country or territory which is outside the UK and the EEA and in respect of which there has not been an Adequacy Decision;
"Omniplex Personnel"	the personnel including subcontractors engaged by Omniplex in the provision of the Services;
"Order Form"	the Order Form set out at the beginning of this Agreement;
"Personal Data"	has the meaning given in the UK GDPR;
"Personal Data Breach"	has the meaning given in the UK GDPR;
"Portable Copy"	a copy of Personal Data in a structured, commonly used and machine-readable format;
"Processing"	has the meaning given in the UK GDPR and "Process" and "Processed" have corresponding meanings;
"Processor"	has the meaning given in the UK GDPR;
"Sensitive Personal Data"	has the meaning given in the UK GDPR;
"Services"	means the services (including any Third Party Services) to be provided by Omniplex to the Customer as specified in the Order Form and/or as supplemented in a Statement of Work and/or Additional Product Terms;
"Service Go-Live Date"	means the same as Commencement Date unless otherwise specified in the Order Form;
"Service Specific IPRs"	IPRs in items, materials and/or software created by Omniplex specifically for the Customer for the purposes of this Agreement and any updates and amendments to the same but excluding any Background IPR and Customer Data;
"Statement of Work"	shall mean a statement of work entered into pursuant to these Terms and Conditions for the provision of Services;
"Support"	shall mean the support services as set out in an appendix or referred to in a link;
"Term"	shall mean collectively the Initial Term and any subsequent Renewal Terms;
"Terms and Conditions"	means these terms and conditions;

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| "Third Party Services" | shall mean the relevant Third Party Software and any associated services provided by the relevant Third Party Vendor to the Customer; |
| "Third Party Software" or "TPS" | shall mean the relevant third party software specified in the Order Form and/or Additional Product Terms; |
| "Third Party Vendor" or "TPV" | shall mean the relevant third party provider who is licensing and providing access to the relevant Third Party Software; |
| "VAT" | value added tax chargeable under the Value Added Tax Act 1994 (which is specific to the United Kingdom) and any similar replacement or additional tax; |
| "UK GDPR" | GDPR as it forms part of domestic law in the United Kingdom by virtue of section 3 of the European Union (Withdrawal) Act 2018 (including as further amended or modified by the laws of the United Kingdom or a part of the United Kingdom from time to time); and |
| "Year" | a period of 12 months from and including the Service Go-Live Date or an anniversary of the Service Go-Live Date provided that, where this Agreement is terminated part way through such a 12 month period, a reference to a Year shall include the period from the end of the last Year completed until the date of termination. |
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- 1.2 References to **"clauses"**, **"schedules"** and **"appendices"** are to the clauses, schedules and appendices of this Agreement all of which form part of this Agreement, and which shall have effect as if set out in full in the body of this Agreement. The headings shall not affect the interpretation of this Agreement.

 - 1.3 A **"person"** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality). A reference to a **"company"** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

 - 1.4 Unless the context otherwise requires, words in the singular shall include the plural and vice versa. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

 - 1.5 A reference to a statute or statutory provision or to Applicable Law:
 - 1.5.1 shall include all subordinate legislation made from time to time under the same; and
 - 1.5.2 is a reference to the same as amended, extended, superseded or consolidated from time to time and including any other similar legislation in any other jurisdiction.

 - 1.6 A reference to **"writing"** or **"written"** includes email (including all attachments).

- 1.7 Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.8 Any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English legal term in that jurisdiction.
- 1.9 Any reference to a document within these Terms and Conditions shall be deemed to include such document as may be updated from time to time.
- 1.10 Any words following the terms "**including**", "**include**", "**in particular**", "**for example**" or any similar expression shall be construed as illustrative and shall not limit the generality of the related general words.

2. Basis of contract

- 2.1 With effect from the Commencement Date, the Customer engages Omniplex and Omniplex accepts its engagement by the Customer to provide the Services on the terms of the Order Form, these Terms and Conditions, the Additional Product Terms and if applicable, a Statement of Work.
- 2.2 The relationship of Omniplex to the Customer shall be that of independent contractor and nothing contained in this Agreement shall create a relationship of employer and employee, principal and agent or partnership between the Customer and Omniplex.
- 2.3 Neither party shall pledge the credit of the other or sign any document, enter into any agreement or make any promise on behalf of the other or in any way indicate that it is entitled to do so without the prior written consent of the other party.
- 2.4 In the event that there is any conflict between the Order Form, these Terms and Conditions, the Additional Product Terms, and any applicable Statement of Work, the order of precedence for resolution of such conflict shall be: the Order Form, the Additional Product Terms, these Terms and Conditions, the applicable Statement of Work and any applicable appendix.

3. Provision of the Services

- 3.1 Omniplex shall provide the relevant Services from the relevant Service Go-Live Date as set out in the Order Form and/or as agreed in writing with Omniplex.
- 3.2 The parties acknowledge and agree that during the Term the Customer may request additional Services to be provided from time to time and Omniplex may accept or reject such request.
- 3.3 Omniplex warrants that:
 - 3.3.1 it has full capacity and authority and all necessary consents to enter into and to perform its obligations under this Agreement;
 - 3.3.2 it shall, in providing the Services co-operate with the Customer in all matters relating to the Services to the extent reasonably required to fulfil the Services; and

- 3.3.3 perform the Services with reasonable care and skill.
- 3.4 Any other warranties, clauses, obligations or implied terms which might otherwise be implied into this Agreement by statute, custom or at law (including, without limit, any warranties of fitness for purpose or relating to satisfactory quality) are excluded to the fullest extent permitted by law.
- 3.5 Omniplex shall be entitled to change the way any of the Services are delivered under this Agreement in order to comply with Applicable Law provided always that such change does not have a material detrimental effect on the Services' performance and functionality. Omniplex shall notify the Customer in writing of any changes to the Services as soon as reasonably practicable.
4. **Support**
- 4.1 Where Omniplex agrees to provide the Customer with Support, such Support shall be provided in accordance with the terms set out in an appendix or referred to in a link.
5. **Third Party Services and product specific terms**
- General**
- 5.1 Subject to the Customer entering into the Additional Product Terms, Omniplex shall procure the grant to the Customer of a licence from the relevant Third Party Vendor to use and access the Third Party Software subject to and on the relevant Additional Product Terms. Notwithstanding the foregoing, the Customer shall (and shall procure that the Customer Personnel) comply with and shall access and use the Third Party Software strictly in accordance with the relevant Additional Product Terms.
- 5.2 The Customer acknowledges and agrees that Omniplex shall have no Liability in respect of the Third Party Software (including but not limited to the functionality, availability or whether the Third Party Software meets the Customer's requirements).
- 5.3 The Customer shall indemnify Omniplex against all damages, losses, liabilities, claims, actions, costs, expenses (including reasonable fees and disbursements for legal or professional services), proceedings, judgments, consensual settlements, penalties, fines, demands, interest and charges incurred or suffered, howsoever arising, by Omniplex as a result of or in connection with the Customer's (including the Customer Personnel's) breach of the terms of the Additional Product Terms.
6. **Customer's obligations**
- 6.1 The Customer shall:
- 6.1.1 co-operate with Omniplex in all matters relating to the Services;
- 6.1.2 provide such information to Omniplex as Omniplex may reasonably request for the purpose of providing the Services and ensure that such information is accurate in all material respects;
- 6.1.3 ensure that the Customer's IT Systems comply with the relevant specification and prerequisites provided by Omniplex to the Customer from time to time;

- 6.1.4 be responsible for procuring, maintaining and securing the Customer's IT systems, and all problems, delays, delivery failures and all other loss or damage arising from or relating to the Customers' network connections or telecommunications links or caused by the internet;
 - 6.1.5 obtain and maintain all necessary licences, permissions and consents which may be required before the Commencement Date;
 - 6.1.6 where appropriate, prepare the Customer premises for the supply of the Services;
 - 6.1.7 comply with all Applicable Law with respect to its activities under this Agreement; and
 - 6.1.8 comply with any additional licence terms applicable to Third Party Software forming part of the Services that we make you aware of in the Additional Product Terms and from time to time.
- 6.2 If Omniplex's performance of any of its obligations under this Agreement is prevented or delayed by any act or omission of the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**") then Omniplex shall notify the Customer of such Customer Default as soon as reasonably possible upon becoming aware of the same and:
- 6.2.1 Omniplex shall be granted an extension of time for the performance of the Services to reflect such delay and shall not be Liable for any Losses sustained or incurred by the Customer arising from Omniplex's failure or delay to perform any of its obligations as set out in this clause 6.2; and
 - 6.2.2 the Customer shall reimburse Omniplex for any additional costs reasonably incurred by Omniplex arising from the Customer Default.

7. **Not Used**

8. **Charges and payment**

- 8.1 The Customer shall pay the Charges in accordance with this clause and the Order Form.
- 8.2 Omniplex shall submit invoices upon receiving a Customer Order or at the intervals set out in the Order Form.
- 8.3 The Customer shall have ten (10) Business Days in which to raise a dispute with an invoice in accordance with clause 8.5 otherwise the invoice shall be deemed to have been approved.
- 8.4 Prior to the commencement of any Renewal Term, Omniplex reserves the right to change the Charges. In the event of any changes to the Charges, Omniplex shall provide the Customer with written notice no later than eight five days (85) days before the end of the Initial Term or Renewal Term. If the changes to the Charges are not acceptable to the Customer, the Customer shall have the right to terminate the Agreement by written notice to Omniplex no later than seventy (70) days before the end of the Initial Term or Renewal Term. The Customer shall otherwise be deemed to have accepted the changes to the Charges and such changes shall apply.

- 8.5 If the Customer has a bona fide dispute with the whole or any part of an invoice, it shall advise Omniplex accordingly in writing. The Customer shall provide details of the invoice and the amounts in dispute and if Omniplex agrees, it shall re-submit the invoice within 10 Business Days of receiving the Customer's dispute notice. If the parties have not resolved the dispute within 30 days of the Customer giving notice to Omniplex, the dispute shall be resolved in accordance with clause 17. Where only part of an invoice is disputed, the Customer shall pay the undisputed amount on the due date for that invoice.
- 8.6 If the Customer fails to make any payment due to Omniplex by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of four (4)% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount. In relation to payments disputed in good faith, interest under this clause is payable only after the dispute is resolved, on sums found or agreed to be due, from the due date until payment.
- 8.7 The Customer shall pay all amounts due under this Agreement in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by Applicable Law). Omniplex may at any time, without limiting any other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Omniplex to the Customer.
- 8.8 All Charges are non-refundable.

9. IPRs

- 9.1 Unless otherwise agreed in writing (including within any Additional Product Terms) and subject to 9.2 and 9.3:
- 9.1.1 the Customer shall not acquire any right, title or interest in or to the IPRs of Omniplex, its licensors or any Third Party Vendor, including:
- 9.1.1.1 the IPR relating to the Third Party Software (including any improvements, updates or upgrades); and
- 9.1.1.2 Omniplex's Background IPR (including any enhancements, improvements, updates or upgrades); and
- 9.1.1.3 any Service Specific IPR (including any enhancements, improvements, updates or upgrades).
- 9.1.2 Omniplex shall not acquire any right, title or interest or to the IPRs of the Customer or its licensors, including:
- 9.1.2.1 the Customer's Background IPR; and
- 9.1.2.2 the IPRs relating to the Customer Data.
- 9.2 To the extent necessary for the Customer to receive the Services and to use and exploit Customer Data in accordance with this Agreement, Omniplex grants the Customer a non-exclusive, non-transferable, revocable licence to use Omniplex's Background IPR and any Service Specific IPRs ("**Omniplex Licence**"). For the avoidance of doubt, this

Omniplex Licence does not grant the Customer any licence to use the Third Party Software. Such licence shall be set out in the Additional Product Terms.

- 9.3 The Customer hereby grants Omniplex a royalty-free, non-exclusive, global licence to use (including the right to grant sub-licences to its subcontractors):

9.3.1 the Customer Data; and

9.3.2 the Customer's Background IPRs,
(together, the "Customer Licensed IPR")

to the extent necessary to enable Omniplex to provide the Services and to fulfil its obligations under this Agreement.

- 9.4 Subject to clauses 9.5 and 9.6, Omniplex shall indemnify the Customer against the damages awarded or the sum of any settlement amounts agreed in respect of any claim against the Customer as a result of or in connection with any claim made by a third party ("**Customer Third Party Claim**") that the provision of the Services or receipt or use thereof by the Customer infringes the IPRs of a third party.

- 9.5 Clause 9.4 shall not apply where the Customer Third Party Claim in question is attributable to:

9.5.1 the Third Party Software and/or Third Party Services;

9.5.2 any use of the Services otherwise than strictly in accordance with the provisions of this Agreement;

9.5.3 the Customer Data; and/or

9.5.4 the Customer's Background IPR;

- 9.6 Clause 9.4 is subject to the Customer having complied with the following:

9.6.1 If any Customer Third Party Claim is made, or there is any notification of an intention by a third party to make a Customer Third Party Claim, the Customer shall:

9.6.1.1 give written notice of the Customer Third Party Claim to Omniplex as soon as reasonably practicable;

9.6.1.2 not make any admission of Liability in relation to the Customer Third Party Claim without the prior written consent of Omniplex;

9.6.1.3 at the request and expense of Omniplex, allow Omniplex to conduct the Customer's defence of the Customer Third Party Claim including settlement; and

9.6.1.4 at the expense of Omniplex, co-operate and assist to a reasonable extent with Omniplex' defence of the Customer Third Party Claim.

- 9.7 Subject to clause 9.8, the Customer shall indemnify Omniplex against all Losses incurred or suffered, however arising, by Omniplex as a result of or in connection with any claim made by a third party ("**Omniplex Third Party Claim**") for:

- 9.7.1 infringement of IPRs or otherwise, where such an Omniplex Third Party Claim arises due to the Customer's use of the Services in breach of this Agreement; and
 - 9.7.2 infringement of a third party's IPRs arising out of or in connection with the use by Omniplex of any of the Customer Materials or the Customer's branding in connection with the Services.
- 9.8 Clause 9.7 is subject to the following:
- 9.8.1 If any Omniplex Third Party Claim is made, or there is any notification of an intention by a third party to make an Omniplex Third Party Claim, Omniplex shall:
 - 9.8.1.1 give written notice of the Omniplex Third Party Claim to the Customer as soon as reasonably practicable;
 - 9.8.1.2 not make any admission of Liability in relation to the Omniplex Third Party Claim without the Customer's prior written consent;
 - 9.8.1.3 at the Customer's request and expense, allow the Customer to conduct Omniplex defence of the Omniplex Third Party Claim including settlement; and
 - 9.8.1.4 at the Customer's expense, co-operate and assist to a reasonable extent with the Customer's defence of the Omniplex Third Party Claim.

10. **Liability**

- 10.1 Neither party limits its Liability:
- 10.1.1 for death or personal injury caused by its negligence or that of its employees, agents or sub-contractors;
 - 10.1.2 for fraud or fraudulent misrepresentation by it or its employees; or
 - 10.1.3 for any other act or omission, Liability for which may not be limited under Applicable Law.
- 10.2 Subject to clause 10.1 Omniplex shall under no circumstances whatever be Liable to the Customer, for:
- 10.2.1 any loss of profits, anticipated profits, business, reputation or goodwill;
 - 10.2.2 any loss or corruption of data or information;
 - 10.2.3 Sensitive Personal Data, whether in connection with a Personal Data Breach or otherwise;
 - 10.2.4 loss of anticipated savings or wasted expenditure;
 - 10.2.5 any loss or Liability under or in relation to any other contract;
(in each case whether direct or indirect), and/or
 - 10.2.6 any indirect, special, consequential or pure economic loss or damage.

- 10.3 Subject to clause 10.1, Omniplex's total Liability in connection with this Agreement throughout the Term, shall be one hundred and twenty five percent (125%) of the Charges paid in the Year in which the first act or omission giving rise to the Liability occurs.

11. Assignment and subcontracting

- 11.1 Omniplex may at any time assign, transfer, mortgage, charge, declare a trust over, subcontract, delegate or deal in any other manner with any or all of its rights or obligations under this Agreement without the Customer's consent.
- 11.2 The Customer shall not assign, transfer, mortgage, charge, declare a trust over, subcontract, delegate or deal in any other manner with any or all of its rights or obligations under this Agreement without Omniplex's written consent.

12. Confidentiality

- 12.1 Subject to clause 12.2, each party to this Agreement (the **Recipient**) shall:
- 12.1.1 use the other party's (the **Disclosing Party's**) Confidential Information solely for the performance of this Agreement; and
 - 12.1.2 keep the Disclosing Party's Confidential Information strictly confidential and not, without the Disclosing Party's prior written consent, disclose it to any other person.
- 12.2 The Recipient may disclose the Disclosing Party's Confidential Information:
- 12.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the Recipient's rights or carrying out its obligations under or in connection with this Agreement and the Recipient shall ensure that such persons comply with this clause 12;
 - 12.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority; and
 - 12.2.3 if such information is public knowledge or already known to the Recipient at the time of disclosure or subsequently becomes public knowledge other than by breach of any duty of confidentiality (contractual or otherwise).

13. Data Protection

- 13.1 The Customer acknowledges that any Personal Data collected by Omniplex pursuant to Services and/or products provided by Omniplex shall be collected in accordance with Omniplex's privacy policy at <https://omniplexlearning.com/privacy-policy/> ("**Omniplex's Privacy Policy**").
- 13.2 The Customer also acknowledges and agrees that where Omniplex is procuring and facilitating the grant of a licence from the relevant Third Party Vendor for the Customer to use and access the Third Party Software, Omniplex may provide such Third Party Vendor with the relevant Customer's Personal Data for the purpose of the Third Party Vendor providing the Third Party Service but that any processing of personal data by the relevant Third Party Vendor shall be carried out pursuant to the relevant Third Party

Vendor's privacy policy (a link to which is in the Additional Product Terms) and any data processing agreement between the Customer and the Third Party Vendor.

- 13.3 The parties acknowledge and agree that for the purposes of this Agreement: (i) the Customer is the Controller and Omniplex is a Processor in respect of all Customer Personal Data Processed pursuant to this Agreement; and (ii) any relevant Third Party Vendors are separate Processors of Customer Personal Data Processed by them.
- 13.4 The Customer shall comply with its obligations under Data Protection Laws in respect of all Personal Data Processed pursuant to this Agreement. The Customer acknowledges that Omniplex is not responsible for determining the requirements of all laws applicable to the Customer's business or that Omniplex's provision of the Services will meet the requirements of such laws. The Customer will ensure that Omniplex's Processing of Customer Personal Data, when done in accordance with the Customer's instructions, will not cause Omniplex to violate any applicable law, regulation, or rule, including without limitation Data Protection Laws.
- 13.5 The Customer warrants and represents that:
- 13.5.1 all Personal Data which it transmits to Omniplex and relevant Third Party Vendors is transmitted in accordance with Applicable Laws; and
- 13.5.2 it has and shall maintain throughout the term of this Agreement all appropriate, lawful bases to use such Personal Data in accordance with this Agreement, including ensuring the provision of Omniplex's Privacy Policy and/or any relevant Third Party Vendor privacy policy to any relevant Data Subjects covering the Processing of such Personal Data by Omniplex and/or any relevant Third Party Vendor pursuant to this Agreement.
- 13.5.3 (unless otherwise agreed by Omniplex), the Customer will not provide (or cause to be provided) any Sensitive Personal Data to Omniplex for processing under the Agreement.
- 13.6 Omniplex shall only Process Personal Data for the purpose of performing the Data Processing Purpose on reasonable written instructions that the Customer may give to Omniplex from time to time concerning such Processing. The Customer shall ensure that any such instructions comply with all Applicable Laws. Omniplex shall notify the Customer if, in Omniplex's opinion, any instruction given by or on behalf of the Customer breaches Data Protection Laws and may refuse to comply with any such instruction.
- 13.7 Notwithstanding any provision to the contrary within this clause 13, Omniplex may take any steps that Omniplex (acting reasonably and in good faith) determines are necessary in order for it to comply with Data Protection Laws. This shall include Omniplex having the right to notify the ICO and any relevant Supervisory Authority of any circumstance that has arisen in relation to the Processing of Personal Data under this Agreement to the extent that Omniplex (acting reasonably and in good faith) believes that this is necessary in order to comply with Data Protection Laws.

Security

- 13.8 Omniplex shall maintain appropriate technical and organisational security measures in accordance with Article 32 of the UK GDPR,

- 13.9 Omniplex shall ensure that the measures to be taken pursuant to clause 13.8 are appropriate having regard to:
- 13.9.1 the nature of the Personal Data and the scope, context and purposes of the Processing and the likelihood and severity of the risks to Data Subjects that are presented by the Processing of such Personal Data, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise Processed; and
 - 13.9.2 the state of technological development and the cost of implementing such measures.

Record-Keeping & Audits

- 13.10 Omniplex shall:
- 13.10.1 maintain a record of its Processing activities which relate to this Agreement as required by Article 30(2) of the UK GDPR and make such record available upon request to the Customer, and the ICO; and
 - 13.10.2 at any time upon request, and in any event upon termination or expiry of this Agreement, (unless the Customer agrees otherwise in writing in each case) deliver up all Personal Data Processed pursuant to this Agreement.
- 13.11 Following such delivery up and in the event of termination or expiry of this Agreement Omniplex shall promptly and securely delete or destroy all such Personal Data except for any Personal Data:
- 13.11.1 which is necessary to enable Omniplex to comply with any continuing obligations that Omniplex may have following termination or expiry of this Agreement; or
 - 13.11.2 which Data Protection Laws require to be stored.
- 13.12 Each party shall provide the other with such information as such other party reasonably requests from time to time to enable such other party to satisfy itself that the party providing the information is complying with its obligations under this clause 13.

Data Transfers

- 13.13 Omniplex may cause or allow Personal Data to be transferred to and/or otherwise Processed in a Non-adequate Country, provided that such transfer or Processing complies with Data Protection Law.
- 13.14 The Customer acknowledges and agrees that Omniplex shall be entitled to use sub-processors to Process Personal Data on Omniplex's behalf. A list of sub-processors is available on request.
- 13.15 Omniplex shall have entered into and will maintain a written agreement with each of its sub-processors containing data protection obligations not less protective than those in these Terms and Conditions with respect to the protection of Customer Personal Data to the extent applicable to the nature of the services provided by such sub-processor. Omniplex shall be liable for all acts and omissions of such sub-processors to the same extent that Omniplex would be liable if performing the services of each sub-processor directly under the terms of these Terms and Conditions.

Data Subject Rights

- 13.16 Omniplex shall, to the extent reasonably practicable, provide the Customer at the Customer's expense with such assistance as the Customer reasonably requests in order to comply with its obligations and fulfil Data Subjects' rights under Data Protection Laws, including:

13.16.1 responding to requests or queries from Data Subjects in respect of their Personal Data (including the provision of Portable Copies);

13.16.2 cooperating with a legal action in connection with the Personal Data or an investigation in connection with the Personal Data by a regulatory body; or

13.16.3 restoring access to and/or otherwise safeguarding the Personal Data,

within any reasonable timescales agreed with the Customer.

Personal Data Breach Notification

- 13.17 Omniplex shall notify the Customer without undue delay if Omniplex becomes aware of a Personal Data Breach which relates to the processing of Personal Data carried out by Omniplex pursuant to this Agreement.

Costs

- 13.18 The Customer shall reimburse Omniplex immediately on request for all reasonable costs that Omniplex incurs in complying with clauses 13.16 and 13.20.

Controllers

- 13.19 To the extent that both Omniplex and the Customer are Controllers in relation to any Personal Data Processed in connection with this Agreement, then both parties shall perform their respective duties under Data Protection Laws and shall give all reasonable assistance to each other where appropriate or necessary to comply with such duties, including mutual cooperation in respect of providing a privacy notice and dealing with complaints.

Miscellaneous

- 13.20 Omniplex shall at the Customer's expense provide reasonable assistance, as requested by the Customer from time to time, in undertaking any data protection impact assessments and/or consultation with the ICO and/or a relevant Supervisory Authority that the Customer may reasonably undertake pursuant to Article 35 and/or 36 (as applicable) of the UK General Data Protection Regulation.
- 13.21 Omniplex shall ensure that its personnel, to the extent that they are involved in the Processing of Personal Data in connection with this Agreement, shall be subject to appropriate binding obligations to protect the confidentiality of such Personal Data.
- 13.22 Omniplex's obligations under this clause 13 exclude any Personal Data relating to its personnel engaged in the performance of Omniplex's obligations under this Agreement generated by Omniplex solely for the purposes of its internal human resources procedures and records.

14. **Term and termination**

- 14.1 This Agreement shall begin on the Commencement Date and continue for the Initial Term. Following the Initial Term, the relevant Service shall automatically renew for successive periods of twelve (12) months (each a "**Renewal Term**"), unless either party provides no less than seventy (70) days written notice of its intention to terminate prior to the end of the Initial Term or the relevant Renewal Term.
- 14.2 Without limiting its other rights or remedies, either party may terminate this Agreement with immediate effect by giving written notice to the other party if the other party:
- 14.2.1 commits a material breach of any term of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of being notified in writing to do so;
 - 14.2.2 is declared or becomes insolvent, has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things, or takes or suffers any similar action in any jurisdiction or any step is taken (including the making of an application, the entering into of a board resolution or the giving of any notice) by it or by any other person in respect of any of these circumstances (an "**Insolvency Event**");
 - 14.2.3 suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
 - 14.2.4 Without limiting its other rights or remedies, Omniplex may:
 - 14.2.4.1 terminate this Agreement with immediate effect by giving written notice to the Customer if:
 - (a) the relevant Third Party Vendor terminates its agreement with Omniplex for the resale of the relevant Third Party Software;
 - (b) the Customer fails to pay any amount due under this Agreement on the due date for payment and fails to pay all outstanding amounts within thirty (30) days after being given written notice to do so.
 - 14.2.4.2 suspend provision of the Services under this Agreement if Omniplex reasonably believes that the Customer is about to become subject to an Insolvency Event, or if the Customer fails to pay any amount due to Omniplex on the due date for payment until the Customer makes such payment.

15. **Consequences of termination**

Upon expiry or termination of this Agreement for any reason:

- 15.1 the Customer shall immediately pay to Omniplex all Omniplex's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Omniplex may submit an invoice, which the Customer shall pay immediately on receipt;

- 15.2 the Customer shall immediately stop using the Services;
- 15.2.1 the Customer shall return any Deliverables which have not been fully paid for. If the Customer fails to do so, Omniplex may enter the Customer Premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose;
- 15.3 each party shall promptly return or (at the other party's option) destroy all the other party's Confidential Information (which includes deletion of copies of software, owned by Omniplex or its licensors, from laptops or other equipment of the Customer) in its possession or control. Where such Confidential Information is stored electronically, each party agrees to destroy such information to the extent possible;
- 15.4 the parties' rights and remedies that have accrued as at termination shall be unaffected; and
- 15.5 clauses that expressly or by implication survive termination shall continue in full force and effect including clauses 7 (Charges and payment), 10 (Liability), 12 (Confidentiality), 13 (Data Protection), 15 (Consequences of Termination), 17 (Dispute Resolution), 18 (Notices), and 19.8 (Governing law and jurisdiction).

16. Force majeure

- 16.1 If a party (an "**Affected Party**") is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event, the Affected Party shall not be in breach of contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 16.2 A "**Force Majeure Event**" means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure or interruption of energy sources, other utility service or transport network, acts of God, war, threat of or preparation for war, armed conflict, terrorism, riot, civil commotion, interference by civil or military authorities, sanctions, embargo, export or import restriction, quota or prohibition, breaking off of diplomatic relations, national or international calamity, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosion, collapse of building structures, fire, flood, drought, storm, earthquake, volcanic eruption, loss at sea, epidemic, pandemic, illness or sickness of a trainer, or similar events, natural disasters or extreme adverse weather clauses, or default of suppliers or subcontractors.
- 16.3 If the period of delay or non-performance continues for (three consecutive (3) months the party not affected may terminate this Agreement by giving thirty (30) Business Days' written notice to the Affected Party.

17. Dispute resolution

- 17.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (a "**Dispute**") then the parties shall follow the procedure set out in this clause:

- 17.1.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (a "**Dispute Notice**"), together with relevant supporting documents. On service of the Dispute Notice, the parties' Representatives specified in the Order Form ("**Dispute Representatives**") shall attempt in good faith to resolve the Dispute;
- 17.1.2 if the Dispute Representatives are unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution ("**CEDR**") Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (an "**ADR notice**") to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than thirty (30) days after the date of the ADR notice.
- 17.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 19.8 which clause shall apply at all times.

18. Notices

- 18.1 Any notice or other communication given to a party under or in connection with this Agreement shall be in writing and shall be:
 - 18.1.1 delivered by hand or by pre-paid first-class post or by a signed-for next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - 18.1.2 sent by email to legal@omniplelearning.com (for giving notice to Omniplex); and
 - 18.1.3 sent by email to the email address then associated with the Customer's account (for giving notice to the Customer). It is the Customer's responsibility to keep its email address current. (The Customer will, in accordance with clause 18.2.4, be deemed to have received any email sent to the email address then associated with its account whether or not it has actually received the email).
- 18.2 Any notice or communication shall be deemed to have been received:
 - 18.2.1 if delivered by hand, on signature of a delivery receipt or, if not signed for, at the time the notice is left at the correct address;
 - 18.2.2 if sent by pre-paid first-class post, at 09:00 on the second Business Day after posting; and
 - 18.2.3 if sent by a signed-for next working day delivery service, at the time recorded by the delivery service; and
 - 18.2.4 if sent by email, at 09:00 on the next Business Day after transmission.

- 18.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

19. General

- 19.1 Omniplex may use the Customer's name as a reference or in any advertising or promotional materials, press release, tender, proposal, speech, article or other similar material.
- 19.2 No amendment to or modification of this Agreement is effective unless it is in writing, identified as an amendment to or modification of this Agreement and signed by an authorised representative of each party. Notwithstanding the foregoing, Omniplex reserves the right, in its sole discretion, to make changes to the Services where it:
- 19.2.1 is instructed to do so by a Third Party Vendor; or
- 19.2.2 deems necessary or useful to:
- 19.2.2.1 maintain or enhance the quality or delivery of Services to its customers;
- 19.2.2.2 maintain or enhance the competitive strength of or market for the Services;
- 19.2.2.3 improve the Services' cost efficiency or performance; or
- 19.2.2.4 to comply with Applicable Law, provided that no such changes have the effect of materially degrading the functionality of the Services.
- 19.3 This Agreement is personal to the parties and no third parties shall be considered beneficiaries for any purposes, under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 19.4 No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of or prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 19.5 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Omniplex which is not set out in this Agreement.
- 19.6 A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Agreement.

- 19.7 This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute a single agreement.
- 19.8 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England. The Customer irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims). Nothing in this clause shall limit Omniplex's right to take proceedings against the Customer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdictions.

ADDITIONAL PRODUCT TERMS – PROFESSIONAL SERVICES

“Bank of Days”	means the number of Days purchased by the Customer that can be used against Onboarding Services, Professional Service(s) or Digital Learning Content Services – as further detailed at paragraph 4.
“Bank of Hours”	means the number of hours purchased by the Customer that can be used against Professional Service(s) – as further detailed at paragraph 4.
“Customer Materials”	all branding, documents, materials, equipment, drawings, specifications and data supplied or made available by the Customer to Omniplex;
“Day”	means 7.5 hours, between the hours of 09:00 to 17:00 in the United Kingdom, on any day between Monday and Friday, excluding Bank Holidays in England and Wales.
“Deliverables”	all documents, products and materials provided by Omniplex and/or Omniplex Personnel as part of or in relation to the Professional Services in any form or media, including text, drawings, data maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts);
“Digital Learning Content Services”	Omniplex supply of project based design services including but not limited to supply of digital learning materials, educational materials and/or other design features for web pages and/or other materials; as more particularly described in the Statement of Work and/or Order Form;
“Learning Success Management Services”	means the services as described in paragraph 2 below;
“Learning Success Management Services Tier”	means the Learning Success Management tier subscribed to and will be either Standard or Plus (as set out in the Order Form). The difference between the two tiers is the number of reviews included, as further described at paragraph 2.4 below;
“Onboarding Services”	means any preliminary work required by the Customer to be delivered in advance of and/or alongside the delivery of Omniplex Guide or Docebo Services (including but not limited to a Plan, where applicable) as further described in the Additional Product Terms for those products and as set out in a Statement of Work agreed between the parties;
“Plan”	means the project/implementation plan and/or timetable as set out in the relevant Statement of Work agreed between the parties;

“Professional Services”

means:

- Learning Success Management Services
- Digital Learning Content Services
- Specialist Services

“Specialist Services”

Omniplex supply of specialist services including but not limited to:

- Instructional design
- Graphic design
- Content design
- Guide design
- Technical and functional consultancy
- Additional training
- Rollout and engagement
- Troubleshooting A360 projects
- Upskilling in authoring tools
- Creative workshops
- Thought leadership
- Inspiration sessions
- Course creation coaching
- Review/feedback on courses
- Quality Assurance
- Any other services Omniplex agrees to carry out in accordance with these terms.

1. Professional Services

- 1.1 In the event that the Customer requires any Professional Services, such services shall be agreed between the parties in a Statement of Work.
- 1.2 For Professional Services, the parties will agree the scope and timeline of any such Services within fifteen (15) days of signature of the Order Form and/or Statement of Work (unless already agreed in an Order Form or Statement of Work).
- 1.3 For Digital Learning Content Services, Omniplex will seek to agree dates for delivery with the Customer as soon as possible after signature of the Order Form and/or Statement of Work.
- 1.4 The commencement of any Professional Services purchased must start within thirty (30) days of invoice date or as otherwise set out in the Order Form.
- 1.5 The Customer shall co-operate with Omniplex and shall provide all necessary information that Omniplex may require to provide the Professional Services .
- 1.6 The Customer shall ensure that its key members of staff required for Omniplex's delivery of the Professional Services are available to Omniplex throughout the delivery of such services.

- 1.7 Omniplex shall use reasonable endeavours to perform the Professional Services in accordance with the relevant timetable set out in the Plan, but any such timetable and dates are understood to be estimates, and time shall not be of the essence.
- 1.8 The Professional Services may require Customer assistance from time to time as set out in the Statement of Work. In the event of any delays in the Customer's provision of such assistance, Omniplex reserves the right to:
 - 1.8.1 adjust any agreed dates.
 - 1.8.2 (where the final delivery date is delayed by more than one calendar month,) invoice for all outstanding monies;
 - 1.8.3 (where delivery is delayed by more than one calendar month,) invoice an additional five per cent (5%) of the full project amount for every additional month there is a delay;
 - 1.8.4 (where the project is delayed for three (3) months or longer,) EITHER rescope and provide revised costs for the remaining activities, OR close the project and deem it to be completed with no refund due, nor any crediting of Bank of Hours/ Bank of Days (where the project is being paid for by Bank of Hours/ Bank of Days).
- 1.9 Where Omniplex has submitted Deliverables to the Customer for acceptance and/or review, the Customer will be deemed to have accepted such Deliverables in full if no communication is received from the Customer within ten (10) days of Omniplex's submission. Alternatively, if the Customer does not sign off a project within ten (10) days of a request to do so, Omniplex, at its discretion, will close the project and deem it to be completed with no refund due.
- 1.10 Where the Customer wishes to change, amend, or extend the Deliverables or any other aspect of the services set out in the Statement of Work, it shall submit a change request to Omniplex using Omniplex's Change Request form (available on request). Omniplex shall assess the Change Request for technical viability, and subject to this shall set out any additional Charges and estimated time for the requested change(s). A Change Request shall only be deemed to be accepted and agreed by the parties upon the signing of an amended Statement of Work.
- 1.11 It is the Customer's responsibility to obtain Third Party Software licences to use and edit the Deliverables.

2. **Learning Success Management Services**

- 2.1 It is intended that the Learning Success Management Services will complement other product/ services you purchase from Omniplex and to be eligible to purchase Learning Success Management, a minimum spend threshold applies, which is at Omniplex's discretion.
- 2.2 The Initial Term of your Learning Success Management Services will co-term with the then current term of any such complementary service. For example, if you have eight months left of your contract for another product/ service and wish to purchase the Learning Success Management Services to complement this service, the Initial Term of the Learning Success Management Services will be eight months, and the Learning Success Management Services shall automatically renew at the same time as your

contract for the other product(s)/ service(s), in accordance with 14.1 of the Terms and Conditions (unless otherwise specified in the Order Form). (The Initial Term of your Learning Success Management Services must be at least 6 months for an Annual Workshop to be included.)

2.3 The Charges for the Learning Success Management Services consist of an annual fee which shall be pro-rated where the Initial Term is less than one Year (as shall be set out in the Order Form).

2.4 The Learning Success Management Services includes:

- 1 Annual Workshop per Year.
- 3 quarterly (Learning Success Management Services Tier - Standard) or 11 monthly (Learning Success Management Services Tier - Plus) reviews per Year (dates to be agreed).
- Discount to Professional Services (see para 2.7below).

2.5 Workshops conditions:

2.5.1 Workshops must be scheduled within one month of the Commencement Date of the Learning Success Management Services (as set out in the Order Form).

2.5.2 Workshops will last 1 day and will either be delivered virtually or in person (as agreed between the parties and set out in the Order Form).

2.5.3 Where Workshops are delivered in person at a Customer or Customer designated venue, Omniplex will charge travel and expenses of £350 a day (excl VAT) per person within the UK and Northern Ireland unless otherwise specified in the Order Form. Omniplex will invoice travel and expenses costs to the Customer in accordance with clause 8 of the Terms and Conditions.

2.5.4 Omniplex does not warrant that the Workshops, if delivered virtually, will be uninterrupted and Omniplex is not responsible for any delays, delivery failures, or any other loss or damage resulting from communication networks and facilities, including the Internet, and the Customer acknowledges that the Workshops may be subject to limitations, delays, and other problems inherent in the use of such communications facilities.

2.6 Review conditions:

2.6.1 Reviews are conducted monthly where the Learning Success Management Tier is "Plus" and a quarterly basis for "Standard".

2.6.2 Reviews will be 1-hour in length and delivered virtually except as otherwise agreed in Omniplex's absolute discretion.

2.7 Discounted Professional Services

2.7.1 A discount of 10% can be used against other Professional Services.

3. **Bank of Hours**

3.1 Customers can purchase a Bank of Hours that can be used against the delivery of Professional Services.

- 3.2 The minimum purchase is five (5) hours.
- 3.3 Any Bank of Hours purchased must be used within three (3) months of the date the Customer signs the Order Form unless otherwise set out in the Order Form.
- 3.4 Any Bank of Hours (or portion thereof) that remains unused after the date falling three (3) months after the invoice date (or other date set out in the Order Form) will be deemed to be used.
- 3.5 Once a Bank of Hours is allocated to the delivery of Professional Services, it cannot be cancelled and/or re-allocated to any other services offered by Omniplex.
- 3.6 Any unused Bank of Hours will not be refunded.
- 3.7 For the avoidance of doubt, Bank of Hours cannot be used to pay for Learning Success Management Services, nor any other Omniplex services or software license fees.

4. **Bank of Days**

- 4.1 Customers can purchase a Bank of Days – Specialist Services, which can be used against the delivery of Onboarding Services and Specialist Services but not Digital Learning Content Service(s).
- 4.2 Customers can purchase a Bank of Days – Digital Learning Content Services, which can only be used against the delivery of Digital Learning Content Service(s).
- 4.3 Any Bank of Days purchased must be used within (12) months of the date the Customer signs the Order Form unless otherwise set out in the Order Form.
- 4.4 Any Bank of Days (or portion thereof) that remains unused after the date falling twelve (12) months after the invoice date (or other date set out in the Order Form) will be deemed to be used.
- 4.5 Once a Bank of Days is allocated to the delivery of Specialist Services or Digital Content Services, it cannot be cancelled and/or re-allocated to any other services offered by Omniplex.
- 4.6 Any unused Bank of Days will not be refunded.
- 4.7 For the avoidance of doubt, Bank of Days cannot be used to pay for Learning Success Management Services, nor any other Omniplex services or software license fees.

5. **Public Use of Customer Name / Materials**

- 5.1 Omniplex may, with the Customer's prior approval, use the Customer's name and logo as a reference or in any marketing, advertising or promotional materials, press release, tender, proposal, speech, article or other similar material.
- 5.2 The Customer and Omniplex will agree the content of publicity statements and/or press releases prior to their release. Both parties will review the content and suggest edits within five days of submission by email. Once the content has been agreed in writing, Omniplex will be able to make the publicity statement or press release accordingly.
- 5.3 Where Omniplex wishes to use Customer materials (including copyrighted materials) to:

5.3.1 present Omniplex work examples to prospective clients, or other third parties;

5.3.2 include Omniplex work examples on our website and socials;

5.3.3 present Omniplex work examples at events;

or for another reason as communicated in writing by Omniplex;

Omniplex will submit the content to the Customer for approval and only once the content has been agreed in writing will Omniplex be able to use the approved content for the purpose.

5.4 Where Omniplex wishes to use a reference from a Customer (for example, as evidence of work done and/or for another reason as communicated in writing by Omniplex), Omniplex will submit the request for a reference to the Customer. Within five days of submission of the request, the Customer will approve the reference and/or suggest edits. Once the reference has been agreed in writing, Omniplex will be able to use the reference for the purpose previously communicated.