

Terms and Conditions

Key Definitions

Agreement: the full agreement comprises of Service Proposal, these Terms and Conditions and the Data Protection Agreement

Active Users: the total number of Client's user with active log in access to the system

Annual license: a period of twelve months commencing on the day of acceptance of the Agreement

Branding and customisation: software customisation services as outlined in the Service Proposal

Software: The software created by Awaken and known as BeOnline

Site: the internet site created by Awaken for the client with the client's instance of Awaken Software

Deliverables: access to Awaken software and use as outlined in the Service Proposal

Services & Products: the Software and all related services as outlined in the Service Proposal document and any consultancy or support services provided by Awaken

Intellectual Property Rights: means all means all information not publicly known and which is used in or otherwise relates to either Party's business, customers or financial or other affairs, including but not limited to patents, rights to inventions, utility models, copyright, and related rights, trademarks, service marks, trade, business, and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights and all similar or equivalent rights or forms of protection in any part of the world, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights

Copyrights & Intellectual Property Rights

1. The Client acknowledges that any and all of the IP Rights subsisting in, arising from or used in connection with any Site, Software, Deliverables, Services & Products shall be and shall remain the sole property of Awaken Learning and the Customer shall not at any time dispute such ownership.
2. Awaken acknowledges that any and all of the materials and information provided by Clients for the customisation of content or other functionality shall be and shall remain the sole property of Client and Awaken shall not at any time dispute such ownership.
3. The Client will ensure that all materials provided by Awaken Learning (including but not limited to: module storyboards, system training documentation, technical information) will be kept confidential and not disclosed to any third party. Client agrees not to allow any third-party access to the system or to disclose any information to third parties about Awaken software (including consultants) without prior written permission from Awaken.

Licenses, Fees and Payment Terms

4. Unless specifically stated in the service proposal, all licenses issued are Active Users, Annual and Non-Transferable licenses. Licenses must be paid in full prior to the roll out or renewal date by electronic bank transfer into the designated bank account of Awaken Learning.
5. All licenses are issued either by Awaken Learning Ltd., registered in England and Wales or by Awaken Learning (Netherlands) depending on license scope as specified in the service proposal.
6. Prices quoted are subject to local VAT (if applicable). Our standard payment terms are Net 14 Days. Late payment fees and collection charges may apply on all overdue accounts. Clients will be liable for all collection costs incurred by Awaken and its agents.
7. Annual charges may be increased (capped to a maximum 5% of the annual charge which applies in the year immediately prior to the renewal date) according to the average RPI index as published by the UK Office of National Statistics for the 6 months period preceding the anniversary date.

Renewal and Cancellation

8. Awaken will write to clients at least 75 days prior to renewal confirming the renewal terms. Client must accept renewal at least 60 days prior to the anniversary date or the system will be automatically taken offline on the renewal day and all data securely deleted and unrecoverable within 7 working days of disconnection.
9. Either Awaken or the Client may terminate this agreement:
 - a. Upon either party entering into administration, etc.; or
 - b. If either party fails within 30 days to remedy a breach of the Agreement, or
 - c. At the end of the contractual term

Awaken Learning Ltd

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- d. No refunds are given in case of early termination of the contract and all sums payable for the duration of the contract will become due immediately on early termination.

Branding and Customisation

10. Awaken will provide the site branded and customised to the client's logo and preferred colour as long as it is compatible with Awaken standard design. Changes of content to modules will be delivered as per terms outlined in the service proposal.
11. Only the specific branding and customisation changes as specified in the Service Proposal are included in the branding and customisation charges. Awaken may consider any further changes requested by the client and may agree, at its sole discretion, to carry out such changes, which will be chargeable at the daily rate quoted in the Service Proposal.
12. Awaken reserves the right to refuse any request for branding and customisation changes to the system if they are in conflict with the system layout and design.

Warranties and Insurance

13. Awaken warrants that its products will perform substantially in accordance with its product specification for the entire duration of the Agreement and it has all requisite power and authority to enter into this Agreement and to carry out all of its obligations under this Agreement;
14. Awaken further warrants it has obtained and will maintain for the duration of this Agreement all permissions, licences, and consents necessary to perform the Services; and that:
 - a. Client's receipt and use of the Services will not infringe the rights (including the Intellectual Property Rights) of any third party.
 - b. it will perform the Services in accordance with Good Industry Practice;
 - c. the Services and any Deliverables will conform with all descriptions and specifications provided to Client by Awaken, including those set out in the Service Proposal.
15. If the product does not so perform, Awaken Learning shall:
 - a. be obliged to use reasonable endeavours to correct the issue; and
 - b. not be responsible for resolving problems which have arisen wholly or substantially as a result of issues out of Awaken control; and
 - c. have the right to refund the annual licence fee to the client and terminate the Agreement instead of ensuring compliance with the specification.
16. In no event will Awaken Learning be liable to the Customer for loss of profits or loss of business.
17. Subject to clauses 13 to 16, each Party's total aggregate liability to the other Party for the totality of all claims relating to this Agreement, where the cause of action arises in a particular Year, shall be limited to an amount equal to 150% of the Charges paid or payable to the Vendor under this Agreement during that Year.
18. Awaken Learning does not warrant that use of its software will meet statutory requirements as the software should be used as a part of strategy and plan to achieve statutory compliance. The Client accepts responsibility for ensuring it is effectively meeting its statutory requirements.
19. Awaken, at its sole cost and expense, agrees to always maintain during performance of this Agreement and until completion of all Services associated with this Agreement, whichever is later, the following minimum insurance coverage and limits and any additional insurance and/or bonds required by law.
 - a. **Public/Products Liability - Limit of Indemnity:** £5,000,000
 - b. **Employers Liability - Limit of Indemnity:** £10,000,000
 - c. **Professional Indemnity Insurance**

Limit not less than £2,000,000.00 per claim in the event of professional negligence or breach of duty committed by Awaken, its employees, arising out the performance of this Agreement. Tangible damages are not specifically excluded from such policy.

Geographical Limits: Worldwide - **Applicable Courts:** Worldwide (Excluding United States of America and Canada) - **Limit of Indemnity:** £2,000,000 each and every claim or loss, excluding defence costs. - **Excess:** £1,000 each and every claim or loss, excluding defence costs. - **Cyber and Data**

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Provide coverage for the following: Unauthorized use/ access of a computer system such as a computer attack, transmission and receipt of a virus and denial of service attacks; Defense of any regulatory action involving for breach of confidence, personal data, sensitive commercial information or any contractual duty of confidentiality, with a sublimit of Two Million Pounds (£2,000,000.00); costs incurred in notifying data subjects and any regulatory body, and providing credit monitoring service, with a sublimit of £2,000,000.00. Business interruption insurance for loss of income and operating expenses; Coverage for third party if the following occur: (a) transmission of a virus; (b) denial of service attack; (c) unauthorised acquisition, access, use or disclosure of personal data or confidential corporate information that is held or transmitted in any form; (d) prevention of authorised electronic access to authorised electronic access to any computer system, personal data, or confidential corporate information.

Geographical Limits: Worldwide - **Applicable Courts:** Worldwide - **Limit of Indemnity:** £2,000,000 in the aggregate, including all costs - **Excess:** £1,000 each and every claim or loss, including all costs.

Technical Support & Maintenance

20. Awaken is not required to provide any technical support and maintenance other than as expressly set out in the Conditions and/ or Service Proposal.
21. In the unlikely event of issues with our system or hosted services, we will aim to restore full access within 72 hours. Where this is not possible, the response times as listed in point 24 will apply.
22. Where access to the system has been partially or entirely limited due to Awaken Learning's fault (but not in the case of Force Majeure, such as floods, earthquakes, acts of violence and terrorism, war, and other natural or man-made disaster) for a period longer than 1 week, Awaken Learning will extend automatically, the license for an equivalent period.
23. All issues must be reported through the Issue Tracker tool. Our response time will be calculated from the time the issue is recorded and email confirmation is sent by the system to both client and Awaken.
24. Response times are as follows:
 - a. Priority 1&2 issues – Investigation commenced within 8 working hours and updates provided every 24 hours until resolution.
 - b. Priority 3&4 Issues – Investigation commenced within 1 working day and updates provided every 48 hours until resolution.
25. Awaken is not responsible for connectivity issues (including poor broadband connection) other than its servers being unavailable (in this case, except in the case of Force Majeure).

Classification of Support Requests

26. The following response times will apply to support requests:
 - a. PRIORITY 1 - System Down - User unable to continue until problem is resolved, i.e. all users are unable to logon to the system.
 - b. PRIORITY 2 - Problem Intermittent - User can continue but problem is intermittent, i.e. all users are unable to complete a training module.
 - c. PRIORITY 3 - Problem can be overcome but results in unacceptable level of lost time, i.e. user cannot view a certificate.
 - d. PRIORITY 4 - Problem only occurs under certain conditions, i.e. cosmetic issue interface

Data Protection and Processing

27. Awaken Learning will process data in accordance with the Data Protection Agreement.

Applicable Law

28. This agreement and all service proposal are subject to English law and shall be subject to the exclusive jurisdiction of the English courts.

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