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Customised eLearning

Terms & Conditions



Terms & Conditions

THE TERMS AND CONDITIONS BELOW ("Terms") SHALL APPLY TO ALL QUOTATIONS FROM AURION LIMITED, UNLESS OTHERWISE STATED ON THE QUOTATION, AND ANY SUBSEQUENT CONTRACT FOR THE SUPPLY OF ANY SERVICES OR GOODS DETAILED IN THIS OR OTHER QUOTATIONS. PLEASE READ CAREFULLY.

Definitions & Interpretation:

"Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with You.

"Amended Content" means the Aurion Amended Content and the Customer Amended Content.

"Articulate Storyline Tool" The third-party software known as Articulate Storyline.

"Aurion" means Aurion Limited, a company incorporated in Northern Ireland with company number NI038127 and whose registered office address is at 475 Ormeau Road, Belfast, BT7 3GR. Vat Registration Number = 744433339

"Aurion Amended Content" means the amended content created by Aurion by adapting or amending or adding to the Content pursuant to the Services.

"Customer Amended Content" means the amended content created by You by adapting or amending or adding to the Content pursuant to clause 3.1.4 below.

"Confidential Information" means all information (whether written, oral or in electronic form) that You obtain or receive in relation to the Content or otherwise pursuant to the Contract but excluding any information which You can prove by documentary evidence:

(i) is in or which enters the public domain otherwise than as a consequence of a breach of these Terms; or

(ii) was properly in Your possession prior to the disclosure by Aurion to You and was not acquired directly or indirectly from Aurion or any company associated with it or from a third party under an obligation of confidence to Aurion; and no Confidential Information shall be deemed "in the public domain" or "in Your possession" merely because such information is embraced by more general information.

"Content" the content or module(s) supplied to You by Aurion including without limitation any data, designs, drawings, documents, specifications, software and software listings, source or object codes any and all literary dramatic and artistic or other works and/or material incorporated or proposed to be incorporated in the Content regardless of the mode, means or method of storage, representation or presentation of same.

"Content Fee" means the fee payable by You to Aurion in respect of the Content as outlined in the Quotation.

"Contract" means the contract between You and Aurion for the provision of the Content and/or Services, which shall consist of the Quotation, these Terms and the Order (once accepted by Aurion).

"Customer Information" all drawings, pictures, photographs and other images, maps, plans, designs, specifications, calculations, instructions and other documents, materials, or information (whether

written or otherwise) in any form including electronic provided to Aurion by You outlining the Services requested.

“Encumbrance” means any mortgage, claim, charge, pledge, lien, hypothecation, guarantee, right of set-off, trust, assignment, right of first refusal, right of pre-emption, option, restriction or other encumbrance or any legal or equitable third party right or interest including any security interest of any kind (or any like agreement or arrangement creating any of the same or having similar effect).

“Fee” means the Content Fee and the Services Fee (if any).

“Group Company” means any subsidiary or holding company of You and any subsidiary of each such holding company of You from time to time (‘holding company’ and ‘subsidiary’ have the meanings ascribed to them in section 1159 of the Company Act 2006).

“Insolvency Event” shall mean any one or more of the following:

- (a) You are insolvent or unable to pay Your debts as they fall due;
- (b) an order is made or a petition presented for Your bankruptcy or winding up, or any resolution is passed for Your winding up, liquidation or dissolution, or any receiver, administrator, administrative receiver, trustee in bankruptcy or similar officer is appointed over all or any material part of Your assets;
- (c) any Encumbrance on or over all or a material part of Your assets becomes enforceable and any step (including the taking of possession or the appointment of a receiver, manager or similar person) is taken to enforce that Encumbrance; or
- (d) anything analogous to or having a substantially similar effect to any of the events specified in the previous paragraphs inclusive shall occur under the laws of any applicable jurisdiction.

“Order” means the order placed by You for the Content and/or Services on foot of the Quotation and shall be deemed to include Your express acceptance of these Terms.

“Quotation” means the offer or quotation given by Aurion to You in respect of the provision of the Content and/or Services.

“Services” means those services to be supplied by Aurion to You pursuant to the Quotation (if any).

“Services Fee” means the fee payable by You to Aurion in respect of the Services as outlined in the Quotation (if any).

“Term” means perpetuity unless and until terminated in accordance with the Contract.

“Users” means Your employees, staff or those other users authorised in writing by Aurion.

“You” means the person, firm or company with whom Aurion has agreed to provide the Content and/or Services as set out in the Quotation.

1. Formation of Contract

1.1 These Terms supersede any other terms and conditions including without limitation any terms or conditions, or descriptions or statements as to quality or suitability for any purpose and override and exclude other terms and conditions, descriptions and statements as to quality, whether in the Order or otherwise including without limitation any terms which You purport to apply or request.

1.1 Quotations remain valid for a period of 90 days from their date, or such other period as stated in the Quotation, provided Aurion has not previously withdrawn it.

1.2 You may request an Order within the period stated in clause 1.2 above, at which stage You expressly agree to be bound by these Terms.

1.3 No Order shall be deemed to be accepted by Aurion and no contract will come into existence until a written acknowledgement is issued by Aurion.

1.4 No addition, alteration, substitution or waiver of these Terms will be valid unless expressly accepted in writing by Aurion.

1.5 Any alterations, additions or revisions to the Contract shall be subject to additional costs or charges and agreed in writing between the parties provided always that Aurion may at any time without notifying You make any changes to the Content and/or Services and alterations, additions or revisions to the Contract which are necessary to comply with any applicable safety or other statutory or regulatory requirements or guidelines, or which do not materially affect the nature or quality of the Content/Services.

1.6 No Contract may be cancelled without the prior written agreement of Aurion. Should Aurion consent to cancellation of a Contract, Aurion may charge You all costs and expenses arising directly or indirectly as a result of having entered into the Contract.

2. Property of Aurion

The copyright, trademark, trade names, patents, database rights and any other intellectual property rights subsisting in or used in connection with the Content are and remain the property of Aurion worldwide. You are licensed to use it subject to and in accordance with these Terms.

3. Licence

3.1 In consideration of your agreement to these Terms and subject to our receipt of the Fee, Aurion grants You a non-exclusive, non-sublicensable, non-transferable licence to:

3.1.1 download and copy the Content to a computer system or platform which is under Your control for the use(s) as set out herein only;

3.1.2 copy the Content for back-up and archival purposes and make copies of the documentation (if any) forming part of the Content, provided that the original and each copy is kept in your possession and only used in accordance with these Terms;

3.1.3 permit Users to stream (the transfer of an apparently steady and continuous stream of data without a permanent copy of the material being made) the Content free of charge;

3.1.4 subject to clause 4.4.5, edit, modify, vary, add to or adapt the Content as required using the Articulate Storyline Tool.

3.2 You shall be solely responsible for virus detection and the development, operation and maintenance of any system on which the Content is displayed or used by You or your User(s).

3.3 The licence is personal to You and for the avoidance of doubt but without limitation does not extend to any Group Company or Affiliate.

4. Restrictions on Use

4.1 You shall not nor permit facilitate or assist others to (and shall procure that the Users shall not nor permit facilitate or assist others to):

4.1.1 Other than pursuant to clause 3.1 above sub-license, display, distribute, assign, rent, lease or transfer the licence or the Content or the Amended Content or make or distribute copies of the Content or Amended Content in each case in whole or in part;

4.1.2 Other than pursuant to clause 3.1 above permit facilitate or assist any third party to access, view or use the Content or Amended Content;

4.1.3 Other than pursuant to clause 3.1 above translate, reverse engineer, decompile, disassemble, modify, vary or adapt the Content or Amended Content or perform any similar type of operation of any of the foregoing or create derivative works based on the Content or Amended Content except as permitted by law;

4.1.4 Other than pursuant to clause 3.1 above adapt, modify, delete or translate the written material forming part of the Content or Amended Content in any way for any purpose whatsoever;

4.1.5 sell or permit facilitate or assist any third party to sell the Content and/or Amended Content;

4.1.6 vary, delete or obscure any notices of proprietary rights or any product identification or restrictions on or in the Content or Amended Content;

4.1.7 retain copies of any Content or Amended Content after termination of the Contract.

4.2 If a User ceases to be either employed by You or authorised to use the Content, You shall ensure that such User shall immediately cease to use the Content/Amended Content and shall immediately destroy or delete all copies of the Content/Amended from all storage media in their control.

5. Services

5.1 Aurion shall provide such Services as are set out in the Quotation in relation to the provision of Aurion Amended Content.

5.2 Any timeframes stated in the Quotation in relation to the Services are indicative only and, although Aurion shall use reasonable endeavours to meet such timeframes (subject to You providing Customer Information in a timely manner), same shall not be deemed to be a term or condition of the Contract. Time shall not be of the essence or made of the essence by notice.

5.3 Any Aurion Amended Content shall be jointly owned by Aurion and You save and except that all software tools, software sub-routines or modules which can be used to configure or build software application, methodologies, systems, processes, business operations, and/or patentable or copyrightable inventions of discoveries reduced to practice (regardless of whether actually copyrighted or patented) created developed or enhanced in the course of providing the Services or which otherwise form part of the Aurion Amended Content shall be solely owned by Aurion except that you may use same consistent with these Terms. You acknowledge that Your use of any Aurion Amended Content shall be subject to these Terms and in particular but without limitation clauses 3 and 4.

5.4 It is Your responsibility to provide Aurion with any information it may require in order to provide the Services, including without limitation the Customer Information. It is Your responsibility to ensure the completeness of all Customer Information and other information provided to Aurion in relation to

the provision of the Services and that any information and Customer Information is accurate, clear and legible and suitable for Your intended purpose and You warrant that all such information and its use by Aurion will not infringe the copyright or other rights of any third party. Aurion accepts no liability whatsoever arising therefrom or from any act or omission of You, Your servants or agents and You shall indemnify Aurion against any loss, damages, costs, expenses or other claims arising therefrom. Any Customer Information shall remain Your property at all times, but Aurion shall be given a non-exclusive and royalty-free licence to use same and any copyright or other intellectual property in same in relation to the Contract and to retain any copy(ies) of same.

5.5 Aurion reserves the right to delay or suspend provision of the Services (without liability to You) if it is prevented from or delayed in the carrying on of its business or performance of its obligations under the Contract due to circumstances beyond its reasonable control including, without limitation, acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood or other weather event, epidemic, disease, infestation, restrictions on transport or movement, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable goods provided that, if the event in question continues for a continuous period in excess of 90 days either party shall be entitled to give notice in writing to the other party to terminate the Contract.

5.6 The Aurion Amended Content shall be delivered to You via a DropBox link by email for one time download. You will have 15 business days from receipt of the email to either accept the Aurion Amended Content so delivered or give notice of Your rejection, giving detailed written reasons for any rejection, and request replacement Aurion Amended Content. Aurion will use reasonable efforts to revise and remedy the Aurion Amended Content in accordance with Your reasonable instructions. Acceptance of the Aurion Amended Content shall not be unreasonably withheld and if you have not accepted or rejected (and in the case of any rejection given full and complete reasons and details for such rejection) the Aurion Amended Content within said period of 15 business days, You will be deemed to have accepted the Aurion Amended Content and the Services Fee shall become payable in accordance with clause 8 below.

5.7 You shall be entitled to give further notice of your rejection of replacement Aurion Amended Content and to require the further replacement of same in accordance with Clause 5.6 above until such time as you accept the Aurion Amended Content (unless deemed acceptance has occurred pursuant to clause 5.6).

6. Customer Amended Content

6.1 You hereby acknowledge that Content may only be amended by You with the Articulate Storyline Tool (unless otherwise agreed with Aurion).

6.2 Any Customer Amended Content shall be jointly owned by Aurion and You. You acknowledge that Your use of any Customer Amended Content shall be subject to these Terms and in particular but without limitation clauses 3 and 4.

6.3 You hereby grant Aurion a non-exclusive, royalty free, world-wide, perpetual licence to use and exploit all software tools, software sub-routines or modules which can be used to configure or build software application, methodologies, systems, processes, business operations, and/or patentable or copyrightable inventions of discoveries reduced to practice (regardless of whether actually copyrighted or patented) created developed or enhanced by You in the course of producing the Customer Amended Content or which otherwise form part of the Customer Amended Content or any part(s) thereof.

7. Warranties & Undertakings

You hereby warrant, represent and undertake to:

7.1 procure that, prior to use of the Content by You or your Users, all Users are notified of this licence and these Terms and agree to abide therewith;

7.1 reproduce and include our copyright notice (or such other party's copyright notice as specified on the Content) on all and any copies of the Content and any Amended Content, including any partial copies of the Amended Content and/or Content;

7.2 hold all Confidential Information, confidential and not at any time, during this licence or after its expiry, disclose the same, whether directly or indirectly, to any third party without Aurion's consent;

7.3 procure that the Customer Information and Customer Amended Content (if any) shall not infringe any intellectual property rights of any third party.

8. Fee

8.1 You shall pay to Aurion the Content Fee. The Content shall only be delivered to you once the Content Fee has been received by Aurion in full. The Content shall be delivered to You via a DropBox link by email for one time download.

8.2 The Services Fee shall be payable to Aurion after completion and acceptance (or deemed acceptance) of the Services in accordance with clause 5 above and on receipt of an invoice for same from Aurion. Unless otherwise stated on the invoice, payment shall be due within 30 days of receipt of the invoice by You. If You fail to pay in full on the due date for payment any amount which is payable to Aurion then, without limiting any other right that Aurion may have, the amount outstanding shall bear interest, both before and after any judgment, at 8% above the [Bank of Ireland] base rate from time to time accruing on a daily basis from the due date until payment is made in full. If Aurion has to refer unpaid invoices to its legal representatives as well as recovering the invoiced amount and interest it shall be entitled to recover any legal fees incurred.

8.3 No payment shall be deemed to have been received until Aurion has received cleared funds.

8.4 The Fee does not include VAT which You shall pay in addition to the Fee at the rate prevailing on the date of the relevant invoice.

8.5 Any sums payable by You shall be paid by You clear of any deductions, withholdings, set off or counterclaims.

9. Disclaimer

9.1 Aurion does not warrant that the Content/ Amended Content will meet your requirements or that its operation will be uninterrupted or error free. It is Your responsibility to ensure that your operating systems and any third party software required to run the Content/Amended Content (including the Articulate Storyline Tool, if applicable), are up-to-date and Aurion does not make any warranty or representation in respect of compatibility, speed of operation or download times. Aurion excludes and expressly disclaims all express and implied warranties, conditions or other terms not stated in these Terms (including without limitation, loss of profits, loss or corruption of data, business interruption or loss of contracts), so far as such exclusion or disclaimer is permitted under the applicable law.

9.2 The Content/ Amended Content is intended for general information and use by You and Your User(s), as applicable, and is not provided for any specific purpose or persons. Accordingly, it is not intended to be relied upon in making any particular decisions and is not to be taken as definitive guide to legislation or good practice. Reference to the Content is not a substitute for obtaining legal advice or referring to the appropriate national and local policy guidance, legislation or regulations.

9.3 Any previews, drawings, photographs, illustrations, descriptive matter, specifications and advertising issued by Aurion and any description or illustrations contained in Aurion's website, catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Content. They will not form part of these terms and any samples, preview or description provided to You may not be identical to the Content supplied.

9.4 Aurion does not warrant that the Content/Amended Content is free of viruses or other harmful components nor that the function contained in the materials will be uninterrupted or error free or that defects will be corrected and Aurion shall have no liability for any loss, damage, costs or expenses incurred by You due to a virus or other network security failure howsoever caused.

9.5 Aurion shall not update any Content it provides to You and makes no warranty regarding the continued accuracy of same. Any Content shall only be correct as at the date stated on the Content.

9.6 Where Aurion is providing the Articulate Storyline Tool to You, this is provided by permission of the respective licensors and/or copyright holders on the terms provided by such parties, including those terms required to be provided to You that are available at <https://articulate.com/360/terms> ("Third-Party Licence Terms"). Without limiting any other terms in this agreement, Aurion expressly disclaims any liability, warranty, indemnity or other assurance to You regarding the Articulate Storyline Tool. For the avoidance of doubt, the Articulate Storyline Tool is not licenced under this agreement. You shall only have such rights and/or licences to use the Articulate Storyline Tool as are set out in the Third-Party Licence Terms and you hereby agree to indemnify us and keep us indemnified against all claims, demands, actions, expenses arising directly or indirectly from any breach or non-observance by You of any of the Third-Party Licence Terms.

YOUR ATTENTION IS DRAWN IN PARTICULAR TO THE PROVISIONS OF CLAUSE 10.1 AND 10.2

10. Liability

10.1 Aurion's total liability to You in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, shall not exceed the Fee.

10.2 In no event will Aurion be liable to You for:-

10.2.1 loss of profit;

10.2.2 data loss or corruption;

10.2.3 loss of sales or business;

10.2.4 loss of goodwill or business disruption;

10.2.5 any special, indirect, consequential, or pure economic loss, costs, damages, charges or expenses

even if Aurion has been advised of the possibility of such damages. In particular but without limitation, Aurion accepts no liability for any programs or data made or stored with the Content/Amended Content nor for the costs of recovering or replacing such programs or data.

10.3 Nothing in these Terms excludes or limits the liability of Aurion for death or personal injury caused by Aurion's negligence.

10.4 You acknowledge and agree that the limitations contained in this clause are reasonable in the light of all the circumstances.

10.5 You will promptly inform Aurion in the event of any claim(s) by a third party received by You in relation to the Content/Amended Content and You will comply with Aurion's requests in relation to such claim, including permitting Aurion to take carriage of such claim(s). For the avoidance of doubt, You shall not make any admission or settlement in respect of such a matter or claim without Aurion's prior written consent.

10.6 You shall indemnify Aurion against all claims, costs, demands, actions, expenses (including but not limited to legal costs and disbursements), losses, liabilities and damages arising from or incurred by reason of breach of the Contract by You or your User(s).

11. Termination

11.1 Aurion may by notice in writing to You and without prejudice to any other rights or remedies terminate the Contract immediately if:

11.1.1 You or any User(s) are in material breach or repeatedly in breach of any of these terms and conditions, that You do not remedy (if capable of remedy) within thirty (30) days after written notice from Aurion of such breach;

11.1.2 an Insolvency Event shall occur.

11.2 In the event of termination in accordance with this clause all licences granted to You under the Contract shall terminate and You must immediately destroy or delete all copies of the Content/Amended Content from all storage media in your control. Upon termination for any reason, all rights granted to You under the Contract shall cease and You shall cease all activities authorised by the Contract.

11.3 If You are in default of any of the provisions of clause 10.1, Aurion reserves the right to (i) decline to complete any more Services under the Contract or any other Contract with You or any group company; and/or (ii) stop delivery/all future provision of Content/Services to You or any group company.

12. Miscellaneous

12.1 The Contract 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.

12.2 Except as expressly provided in these Terms, no failure or delay by Aurion in exercising any right or remedy relating to these Terms shall affect or operate as a waiver or variation of that right or remedy or preclude its exercise at any subsequent time. No single or partial exercise of any such right or remedy by Aurion shall preclude any further exercise of it or the exercise of any other remedy by Aurion.

12.3 Aurion shall be entitled to, without Your consent assign or sub-contract any part of the Contract.

12.4 You shall not be entitled to assign or sub-contract any part of the Contract.

12.5 Each party acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the other party which is not set out in the Contract.

12.6 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or

unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

12.7 A person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of the Contract, but nothing in the Contract shall affect any right or remedy of a third party which exists or is available otherwise than as a result of that Act.

12.8 Nothing in the Contract shall be deemed to constitute a partnership or joint venture between the parties and neither party shall hold itself out as the agent for or incur any liability on behalf or in the name of the other.

12.9 A notice relating to these Terms will be validly given only if it is in writing and delivered personally or by courier or sent by first class post (or air-mail if overseas), recorded delivery or electronic mail to the party in question at the address or email address set out in the Quotation or as otherwise notified to the other party. In the absence of evidence of earlier receipt a notice is deemed given:-

12.9.1 If delivered personally or by courier, when left at the relevant address;

12.9.2 If sent by post 2 days (excluding Saturdays, Sundays and Bank and public holidays) after posting it (exclusive of the day of posting) or if sent by air-mail, 6 days after posting it (exclusive of the day of posting);

12.9.3 If sent by electronic mail, on a working day prior to 4pm at the time of transmission or sending and otherwise on the next working day.

12.4 The Contract and all matters arising from it are governed by and construed in accordance with the laws of Northern Ireland whose courts shall have exclusive jurisdiction over all disputes arising in connection with the Contract and the place of performance of the Contract is agreed by You to be Northern Ireland.



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