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Learning Portals

Terms & Conditions



Terms & Conditions

Parties

(1) Aurion Limited, a limited company registered under company number NI38127 whose registered office is at 475 Ormeau Road, Belfast, BT7 3GR (the 'Contractor').

(2) [Client name] and any of its Affiliates (the 'Contracting Authority').

1. Definitions

1.1 "*Affiliate*", any entity that directly or indirectly controls, is controlled by, or is under common control with another entity;

1.2 "*Business Day*", a day, other than a Saturday, Sunday or public holiday in the UK, when banks are open for business;

1.3 "*Commencement Date*", ENTER DATE;

1.4 "*Confidential Information*", any information of a confidential or proprietary nature, including (but not limited to) any material information concerning any matters affecting or relating to the business of either Party including, without limitation to the generality of the foregoing, the names of any of its customers, products, financial records, services, research, databases, trade secrets, secret or confidential operations/processes, computer software and source/object code, business or marketing plans, the prices it obtains or has obtained or at which it sells or has sold its Services;

1.5 "*Contract*", this Contract which follows together with any schedule or other annexed material signed by the Parties;

1.6 "*Data Protection Legislation*", means all laws relating to the processing of personal data, privacy and security, including, without limitation, and the General Data Protection Regulations (EU) 2016/679 ("GDPR") together with equivalent legislation of any other applicable jurisdiction;

1.7 "*Deliverables*", the deliverables agreed to between and by the Parties at the commencement of this Contract in respect of the Services as may be set out in Schedule 1;

1.8 "*Initial Term*", shall have the meaning ascribed to it in clause 3.1;

1.9 "*IPR*", all intellectual property rights including without limitation patents, (including utility models and inventions), trade marks (including service marks, trade names and business names), design rights, copyright and related rights (including rights in respect of software), internet designations (including domain names), moral rights and database rights, (whether or not any of these is registered and including any application for registration of any such rights), know-how, Confidential Information and trade secrets for the full term of such rights and including any extension to or renewal of the terms of such rights and all rights or forms of protection of a similar nature or having similar effect to any of these which may exist anywhere in the world;

1.10 "*Services*", the services to be provided by the Contractor to the Contracting Authority in accordance with this Contract, as described in Schedule 1;

1.11 "*Term*", the Initial Term and any Extended Term (as the case may be) of the Contract as set out in clause 3;

2. General

2.1 The Contracting Authority has commissioned the configuration and deployment of the LearnUpon LMS and maintenance during any agreed subscription period.

3. Duration

3.1 This Contract shall commence from the Commencement Date, and continue in line with any agreed LearnUpon subscription period outlined in the Schedule of Services.

4. Contractor's Obligations

4.1 The Contractor undertakes to perform all obligations arising from this Contract with due care, skill and diligence. The Contractor shall require any agents and subcontractors (where permitted) to exercise due care, skill and diligence in the carrying out of obligations allocated by the Contractor under the terms of this Contract.

4.2 In consideration of the payments in accordance with clause 6 (Payment), the Contractor undertakes to provide the Services in accordance with the provisions of Schedule 1 and the terms of this Contract.

4.3 The Contractor undertakes to perform all obligations arising from this Contract in accordance with good industry practice and will comply with all applicable laws.

4.4 The Contractor will be responsible for compliance with all statutory requirements of an employer, all legally binding sectoral agreements and, without prejudice to the generality of the foregoing, shall be solely responsible in law for the employment, remuneration, taxes, immigration and work permits of all personnel retained for the purposes of complying with this Contract.

4.5 The Contractor is deemed to be the prime contractor under this Contract, will assume full responsibility for the execution of the Contract and will assume all the duties, responsibilities and obligations associated with the position of prime contractor. In this regard, the Contractor hereby assumes liability for any subcontractors (where permitted) and shall ensure that its subcontractors shall comply in all respects with the relevant terms of this Contract to the extent that it or they are retained by the Contractor.

4.6 During the course of this Contract, the Contractor shall be an independent contractor and not the employee of the Contracting Authority. The officers, employees or agents of the Contractor are not and shall not hold themselves to be (and shall not be held by the Contractor to be) servants or agents of the Contracting Authority for any purposes whatsoever.

5. Delivery of the Required Services

5.1 The Contractor shall provide the Services at the time(s), to the location(s) and on the date(s) specified in Schedule 1 or otherwise agreed in writing between the Parties.

6. Payment

6.1 Subject to the provisions of this clause 6, the Contracting Authority shall pay the Contractor the Charges in accordance with any invoicing arrangements as set out in the documented proposal provided by Aurion.

6.2 Payment of the Charges is strictly subject to:

6.2.1 Compliance by the Contractor with the provisions of this Contract and any milestones, schedules or deadlines agreed between the Parties from time-to-time;

6.2.2 Successful completion of any acceptance tests (where applicable) pursuant to clause 7;

6.2.3 The furnishing by the Contractor of a valid invoice and such supporting documentation as may be required by the Contracting Authority from time-to-time;

7. Acceptance Testing

7.1 The Contracting Authority shall undertake any acceptance tests and all other necessary and agreed commissioning tests for any Deliverables for the purposes of demonstrating to the Contracting Authority that the relevant Specifications, as set out in Schedule 1, have been met in full. The Contracting Authority shall follow good industry practice when conducting the acceptance tests.

7.2 The acceptance tests will require the Contractor to demonstrate that the Deliverables meet all of the requirements set out in the Specification and that the Deliverables are capable of continuing to meet those requirements for the duration of the Term.

7.3 The Contracting Authority and Affiliates shall either:

7.3.1 accept that the said test results meet the requirements in the relevant Specifications and confirm acceptance; or

7.3.2 notify the Contractor in writing that the test results (and/or data), whether in whole or in part, are not in accordance with the Specifications, and shall formally reject same and require the Contractor to remedy the same. In the event that the Contracting Authority has not, within thirty (30) Business Days as aforesaid, provided the Contractor with its acceptance or written notice that the same has been rejected, then the Services (as appropriate) shall be deemed to be accepted.

7.3.3 In the event that the Contracting Authority invokes the above clause, the Contracting Authority notice shall specify in what respects it considers that the test results and/or data are defective or otherwise non-compliant with the Specification. The Contractor shall forthwith remedy any defect or non-compliance, and re-submit for testing as soon as possible and in any case no later than 10 Business Days from receipt of notice from the Contracting Authority for Contracting Authority testing and acceptance.

7.4 For the avoidance of doubt, acceptance of any part of the Services (as appropriate) by the Contracting Authority shall (with the exception of the deemed acceptance provisions in clause 7.3.2) only be deemed to have taken place upon the Contracting Authority issuance of written confirmation of acceptance.

8. Warranties, Representations and Undertakings

8.1 The Contractor warrants, represents and undertakes that:

8.1.1 It has the authority and right under law to enter into, and to carry out its obligations and responsibilities under this Contract;

8.1.2 It is entering into this Contract with a full understanding of its material terms and risks and is capable of assuming those risks;

8.1.3 It is entering into this Contract with a full understanding of its obligations with regard to taxation, employment, data protection and environmental protection and is capable of assuming and fulfilling those obligations;

8.1.4 It has acquainted itself with and shall comply with all legal requirements or such other laws, recommendations, guidance or practices as may affect the execution of the Contract;

8.1.5 It has taken all and any action necessary to ensure that it has the power to execute and enter into this Contract;

8.2 The Contractor undertakes to notify the Contracting Authority forthwith of any material change to the status of the Contractor with regard to the warranties, representations and undertakings as set out at clause 8.1.1 and to comply with all reasonable directions of the Contracting Authority with regard thereto which may include termination of this Contract.

9. Use of the Platform once configured

9.1 Subject to the terms and conditions of this agreement. Aurion Learning grants you access to a configured portal or portals to:

9.1.1 create and upload content to your portal

9.1.2 run courses and training for End Users for internal business purposes or non-commercial external training.

10.Restrictions on Platform Use

10.1 Except as expressly permitted by the terms of this Agreement, neither you nor your portal users shall:

10.1.1 copy, modify, adapt, translate, distribute, sub-license, market, lease, make available, resell, make derivative works of, disassemble, reverse compile or reverse engineer or otherwise reduce to human-perceivable form any part of the Platform or Aurion Learning Intellectual Property; or discover or disclose the source code, methods and concepts embodied therein, except as may be allowed by any applicable law notwithstanding contractual prohibition.

10.1.2 store, distribute, post, upload or transmit any Content through the Platform that is or is reasonably perceived to be infringing, unlawful or in violation of third-party privacy rights.

10.1.3 introduce any virus, worm, malware, spyware, Trojan horse or other harmful or malicious code

to the Platform,

10.1.4 intentionally interfere with or disrupt the integrity or performance of the Platform.

10.1.5 access and use the Platform in order to (i) build a product or service competitive with the Platform, (ii) copy any ideas, features, functions or graphics of the Platform, or (iii) determine whether the Platform is within the scope of any patent.

10.1.6 use the Platform for the purposes of direct marketing or promotion to anyone other than your end users.

10.1.7 use the Platform to store or transmit (i) personal data which could be considered to be special category data pursuant to the Data Protection Legislation, as defined by the GDPR, (ii) any protected health data, as defined in the Health Insurance Portability and Accountability Act of 1996 as amended and supplemented; (iii) financial information protected under the Gramm-Leach-Bliley Act; or (iv) information that is subject to Payment Card Industry Data Security Standards; (v) Content that could otherwise be subject to governmental regulation or may require security measures beyond those specified by Aurion Learning for the Platform.; or

10.1.8 use the Platform for any illegal, unauthorized or otherwise improper purposes.

11. Intellectual Property

11.1 The Contracting Authority and its licensors shall retain ownership of all the Contracting Authority's IPRs.

11.2 The Contractor shall retain ownership of all pre-existing IPRs.

12. Confidentiality

12.1 Each Party may be given access to Confidential Information from the other Party in order to perform its obligations under this Contract. A party's Confidential Information shall not be deemed to include information that:

12.1.1 is or becomes publicly known other than through any act or omission of the receiving Party;

12.1.2 was in the other Party's lawful possession before the disclosure;

12.1.3 is lawfully disclosed to the receiving Party by a third party without restriction on disclosure.

12.2 Subject to clause 12.4, each Party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Contract.

12.3 Each Party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Contract.

12.4 A Party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other Party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 10.4, it takes into account the reasonable requests of the other Party in relation to the content of such disclosure.

12.5 Neither Party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

12.6 The Contractor acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Contracting Authority's Confidential Information.

12.7 Each Party shall notify the other Party if any of its staff connected with the provision or receipt of the Services become aware of any unauthorised disclosure of any Confidential Information and shall afford reasonable assistance to the other Party, in connection with any enforcement proceedings which that other Party may elect to bring against any person.

12.8 The Contractor shall, promptly (and in any event within 7 days of the termination or expiry of this Contract), deliver up to the Contracting Authority all documents and other materials in the possession, custody or control of the Contractor that bear or incorporate any part of the Contracting Authority's Confidential Information.

12.9 Subject to clause 10.11 each of the Parties agrees to hold Confidential Information received, provided or obtained arising from their participation in this Contract and shall not disclose same to any third party except to its employees, officers or professional advisers for the purposes of carrying out obligations under the Contract, or as may be required by law.

12.10 This Contract is subject to the provisions of the Freedom of Information Act 2014. In the event either Party receiving a request for information related to this Contract, that Party shall consult with the other Party in respect of the request. The other Party shall identify any information that is not to be disclosed on grounds of commercial sensitivity, and shall state the reasons for this sensitivity. The Party will consult the other Party about this commercially sensitive information before making a decision on any Freedom of Information request received. The final decision on disclosure rests with the Office of the Information Commissioner and ultimately, the courts.

12.11 The above provisions of this clause 10 shall survive termination of this Contract, however arising.

13. Data Protection

13.1 All terms in this clause 11 (Data Protection) including "data controller", "data processor", "processing", "personal data", "data protection impact assessment", "data subject", "data subject request" and "data supervisory authority" have the meaning given to them in the GDPR.

13.2 Both Parties shall comply with all applicable requirements of the Data Protection Legislation. This clause 11.2 is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Legislation.

13.3 To the extent that the performance of the Services by the Contractor involve the processing of personal data, the Contractor agrees and warrants that:

(a) it shall only process personal data for the purposes of performing this Contract in accordance with the written instructions of the Contracting Authority or as otherwise notified by the Contracting Authority to the Contractor from time to time;

(b) it complies with and will continue to comply with any obligations as a data processor and obligations in respect of personal data under this Contract;

(c) as personal data are confidential in nature, it shall, unless otherwise directed in writing by the Contracting Authority:

(i) process personal data on behalf of the Contracting Authority exclusively for the performance of the Services and the provisions of this Contract but for no other purposes whatsoever;

(ii) take reasonable steps to ensure that neither the Contractor nor any of its employees, agents or temporary contractors or any sub-processor (where permitted) alter, copy, store, publish, disclose or divulge personal data except as necessary for the performance by the Contractor of its obligations under this Contract or as directed in writing to do so by the Contracting Authority;

(iii) immediately and without undue delay (but in any event within 24 hours of becoming aware of it) notify the Contracting Authority in writing of any suspected, potential or actual data incidents, including any suspected, alleged, potential or actual unauthorised disclosure, loss, destruction, compromise, damage, alteration, access or theft of personal data or any incident or set of events which may give rise to a personal data breach.

14. Conflict

14.1 If there is an inconsistency between any of the provisions of this Contract and the provisions of the Tender Documentation (if any), the provisions of this Contract shall prevail.

15. Force Majeure

15.1 Neither Party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for 15 Business Days, the Party not affected may terminate this Contract by giving 30 Business Days' written notice to the affected Party.

16. Termination

16.1 Either Party shall have the right (in addition to any other rights which it has at law) to terminate this Contract immediately and without liability for compensation or damages on the happening of any of the following:

16.1.1 If the other Party commits any serious breach or a series of breaches of any provision of this Contract and fails to remedy such breach(es) within 30 days after receipt of a request in writing from the other Party; and/or

16.1.2 If the other Party becomes insolvent, becomes bankrupt, is wound up, commences winding up,

has a receiving order made against it, makes any arrangement with its creditors generally or takes or suffers any similar action as a result of debt, or an event having an equivalent effect.

16.2 On completion or termination of this Contract, howsoever arising, the Contractor shall immediately return all Confidential Information, records, papers, materials, media and other property of the Contractor which is in its possession.

16.3 Any paid but unused subscription payments will not be refunded in the effect of termination for convenience outside of the above clauses.

17. Contract Management

17.1 The Contracting Authority and the Contractor shall liaise on a regular basis to address any issues arising that may impact on the performance of this Contract and to agree milestones, compliance schedules and operational protocols as required from time-to-time.

18. Disputes

18.1 Subject to the Parties' respective rights to apply to the courts upon any cause of action at any time, the Parties shall seek to resolve any disputes between them, arising out of or relating in any way to the issues covered by the Contract, amicably. The Parties may agree procedures and protocols for dispute resolution from time-to-time.

19. Severance

19.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the Contract.

19.2 If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

20. Change Control

20.1 The Contracting Authority may, by giving written notice at any time during the Contract request a change to the Services.

20.2 Within 10 Business Days of receipt of such notice, the Contractor shall prepare a written quote for any increase or decrease in the price and the effect that the requested change would have on any project plan or completion date.

20.3 Within 14 Business Days of receipt of the written quote referred to above, the Contracting Authority shall inform the Contractor in writing whether or not the Contracting Authority wishes the requested change to be made.

21. Notices

21.1 Any notice or other document to be given under this Contract shall be in writing and shall be deemed to have been duly given if left at or sent:

21.1.1 by hand; or

21.1.2 delivered by personal delivery or reputable commercial courier (e.g. FedEx); or

21.1.3 electronic mail, confirmed by personal delivery or reputable commercial courier (e.g. FedEx).

21.2 The address, e-mail address and telephone numbers of the Parties for the purpose of the giving of notices under this Contract are as follows:

For the Contracting Authority:

<Please complete>

For the Contractor:

Gavin Woods
Managing Director
Aurion Limited
475 Ormeau Road,
Belfast, BT7 3GR
gavin.woods@aurionlearning.com
+44 (0) 28 9064 3211

21.3 Notices sent by personal delivery or reputable commercial courier (e.g. FedEx), shall be deemed given when actually received or, if earlier, three (3) Business Days after the deposit with a reputable commercial courier. Notices sent by electronic mail, where such is an established means of communication between the Parties, shall be deemed to be served on the day of transmission if transmitted before 4pm in a Business Day but otherwise on the next Business Day. In all other cases, notices and other communications will be deemed to have been served on the Business Day they are actually received.

21.4 All notices, documents and communications provided under this Contract shall be in the English language.

22. Assignment and Subcontract

22.1 The Contractor shall not assign any rights or obligations arising from the Contract.

23. Governing Law, Choice of Jurisdiction and Execution

23.1 This Contract and any dispute in relation to this Contract or its subject matter or formation (including any non-contractual disputes or claims) shall in all aspects be governed by and construed in accordance with the laws of Northern Ireland and the Parties hereby agree that the courts of Northern Ireland have exclusive jurisdiction to hear and determine any disputes or claims arising out of or in connection with this Contract, its subject matter or formation (including non-contractual disputes or claims).

24. Currency

24.1 Tender prices and any other financial information will be submitted in Sterling (£) only. All invoices and payments will be in Sterling (£) only.

25. Media

25.1 No media releases, public announcements or public disclosures relating to this Contract or its subject matter, including but not limited to promotional or marketing material, shall be made by either Party without the prior written consent of the other Party.

26. Miscellaneous

26.1 The failure or forbearance by either Party on any occasion to insist upon the full performance of the terms, conditions and provisions of the Contract shall not constitute a waiver of any breach or an acceptance of any variation of the Contract.

26.2 This Contract replaces, supersedes, and cancels all previous arrangements, understandings, representations and agreements between the Parties either oral or written with respect to the subject matter hereof and each Party irrevocably and unconditionally waives any rights it may have to claim damages and/or to rescind this Contract for any misrepresentation whether or not contained in this Contract.

26.3 Nothing herein contained shall be construed as constituting or be deemed to constitute a partnership, joint venture, agency or relationship of employer and employee between the Parties. If at any time any provision of this Contract is or becomes invalid, illegal or unenforceable, that provision shall be deleted, so long as the commercial purpose of this Contract is still capable of performance and the deletion shall not in any way affect or impair:

26.3.1 the validity, legality or enforceability of any other provision of this Agreement; or

26.3.2 the validity, legality or enforceability of that or any other provision of this Agreement.

26.4 The rights and remedies herein provided are cumulative and not exclusive of any rights and remedies provided by law.

26.5 No variation of this Contract shall be valid unless it is in writing and signed by or on behalf of each of the Parties.

IN WITNESS whereof the Parties hereto have executed this Contract the day and year first herein WRITTEN

SIGNATURES

SIGNED for and on behalf of the Contractor by:

Signed:

Date:

Witnessed by:

SIGNED for and on behalf of the Contracting Authority by:

Signed:

Date:
Witnessed by:

SCHEDULE 1

The Services

1. Services

The Services shall include but are not limited to:

- <Requirements gathering>
- <Consultancy>
- <Configuration>
- <Admin training>
- <Deployment of your portal>
- <Support>



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