

Standard terms and conditions

THIS AGREEMENT is made the <day> <month> <year>

BETWEEN:

- (1) OCB Media Ltd (Company number: 04469235) of The Crescent, 27 King Street, Leicester, LE1 6RX ("OCB Media") and
- (2) XXX (company registration number XXX) whose registered address is XXX ("Client")

OCB Media and the Client may be referred to hereafter as 'Party' or 'Parties'.

WHEREAS:

- A. OCB Media produces accredited medical educational materials and technologies that are engaging, effective and unique in their approach to the teaching of healthcare professionals.
- B. The Client has a requirement to deliver online medical educational materials to end-users.
- C. OCB Media to provide medical educational materials and technologies under licence to the Client for this purpose.

AGREEMENT

1. Definitions and Interpretations

1.1 Definitions

“Agreement” means this agreement.

“Commencement Date” means the date of commencement of the Services as specified in Part C of Schedule 1.

“Completion Date” means the date by which provision of the Services by OCB Media to the Client will end, as specified in Part D of Schedule 1. The Completion Date may be amended by mutual agreement of the Parties in writing.

“Confidential Information” means any commercial, technical and other information and data (of whatever nature and form) proprietary to the Party disclosing it (the ‘Disclosing Party’) which is directly or indirectly disclosed or made available by or on behalf of the Disclosing Party to the other Party (the ‘Recipient Party’), whether in writing, orally, in drawings, by site visits, by access to computer software or data or in any other manner, and which is imparted in confidence or of an otherwise obviously confidential nature.

“Force Majeure” means any cause preventing either Party from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the Party so prevented including, without limitation, strikes, lock-outs or other industrial disputes, act of God, war, riot, fire, flood, civil commotion, malicious damage, compliance with any law or regulation.

“Intellectual Property” means all inventions, patents, registered designs, design rights, database rights, and copyrights, know-how and trademarks (whether registered or not) and the goodwill attaching to any of them and applications for any of them and any right

or forms of protection of a similar nature and having equivalent or similar effect to any of them which may subsist anywhere in the world.

“Purpose” means the provision of the Services pursuant to this Agreement and the evaluation by the Parties of whether to add other projects and services to this Agreement.

“Services” means the services to be provided by OCB Media to the Client pursuant to this Agreement as more particularly set out in Schedule 1 hereto.

- 1.2 References to recitals, clauses and the schedules are to the recitals and clauses of and the schedules to this Agreement.
- 1.3 The schedules (as amended from time to time by agreement of the Parties in writing) form part of this Agreement and shall have the same force and effect as if expressly set out in the body of the Agreement and any reference to the Agreement shall include the schedules.
- 1.4 A reference to any Party shall include a reference to the legal successors to the whole or a substantial part of its undertaking and its permitted assignees.
- 1.5 References to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

2. The Services

- 2.1 This Agreement will commence with effect from the Commencement Date and will continue until the Completion Date unless terminated in accordance with the provisions of clause 7.

2.2 Each Party shall carry out the Services:

2.2.1 with all due skill, care and diligence and in accordance with the professional standards and expertise consistent with generally accepted industry practice;

2.2.2 in compliance with all relevant legislation, rules and regulations, and all necessary licences, permits and consents to enter into and perform this Agreement;

2.2.3 in accordance with the project plan for the Services as set out in Schedule 1; and

2.2.4 in accordance with the terms and conditions of this Agreement,

and shall provide the human resources, materials, facilities and equipment necessary to do the same.

2.3 Each Party warrants that they have used and shall continue to use all reasonable endeavours to ensure the accuracy and completeness of all results of the Services and other information provided by them in relation to the Services (whether before or after the date hereof) and in the event of any error or other deficiency in such results or information coming to its notice shall use all reasonable endeavours to correct promptly, free of charge, any errors or deficiencies in the work directly attributed to the responsible Party.

2.4 If the Services are not performed by the Completion Date then without prejudice to any other rights that it may have, OCB Media reserves the right to:

2.4.1 cancel this Agreement in whole or in part;

2.4.2 refuse to accept any subsequent performance of the Services that the Client may attempt to make;

2.4.3 recover from the Client any outstanding share of income due from sales as detailed in Schedule 1; and

2.4.4 claim damages for any additional costs, loss or expenses incurred by OCB Media which are in any way attributable to the Client's failure to perform the Services by the Completion Date.

3. Payment

3.1 The Client will pay OCB Media the price in accordance with the payment schedule set out in Schedule 1 Part F. The Client shall pay such invoices within thirty (30) days of receipt of a valid invoice from OCB Media.

3.2 In the event that a sum which is properly due to OCB Media in accordance with the provisions of this clause 3 is not paid by the due date for payment OCB Media shall be entitled to simple interest thereon payable from the date the sum became due until payment is duly effected at the rate of 2% above the then prevailing base rate of the Bank of England.

4. Confidentiality

4.1 The Client hereby undertakes to use OCB Media's Confidential Information solely and exclusively for the Purpose.

4.2 Each Party undertakes for a period of three (3) years after the date of termination of this Agreement not to disclose the other Party's Confidential Information.

4.3 The obligations in clause 4.2 shall not apply or shall cease to apply to Confidential Information which:

- 4.3.1 has been received from a third party who is not bound by an obligation of confidentiality to the Disclosing Party;
- 4.3.2 was already in the Recipient Party's possession prior to its acquisition from the Disclosing Party as evidenced by written records;
- 4.3.3 was independently generated by the Recipient Party as evidenced by written records;
- 4.3.4 is in or comes into the public domain other than by reason of a breach of this Agreement;
- 4.3.5 is required to be disclosed by law or a court or other competent authority;
or
- 4.3.6 is disclosed with prior written consent of the Disclosing Party.

5. Intellectual Property

- 5.1 All results, designs, developments, ideas, discoveries, inventions and information having possible application in any business activity of OCB Media and all Intellectual Property therein designed, developed, discovered, invented, produced or originated in the course of or as a result of the provision of the Services shall be the sole and absolute property of OCB Media to deal with as OCB Media deems to be appropriate. All such results, designs, developments, ideas, discoveries, inventions and information shall be part of the Confidential Information.
- 5.3 To the fullest extent permissible by applicable laws, the Client shall procure waivers of moral rights from its staff, agents or any other persons engaged in the

Services that such staff agents or persons may have in relation to any results of the Services.

6. Warranties and Liability

6.1 Each Party warrants and represents that:

6.1.1 it is not prevented or restricted by any obligations owed to a third party or otherwise in any way from performing the Services;

6.1.2 there are no actions, suits or proceedings pending or threatened against or affecting either Party before any court or administrative body or tribunal that might affect the ability of the Parties to meet and carry out its obligations under this Agreement;

6.1.3 the provision of the Services and the Client's use thereof and other information provided in conjunction therewith shall not infringe any Intellectual Property of any third party.

6.2 In the event that OCB Media, its officers, employees, agents or suppliers suffer any loss, damage, liability, costs or expenses (excluding indirect or consequential loss or damage but including legal and other professional fees and expenses) during or after the termination of this Agreement arising, directly or indirectly, from any breach of contract, negligence or wilful act or omission of or by the Client or its staff or agents, the Client shall indemnify OCB Media and such other persons and hold OCB Media and such other persons harmless from and against such loss, damage, liability, costs or expenses in full.

- 6.3 Accordingly, the Client undertakes to take out and maintain adequate insurance cover with a reputable insurance company against such liability. The Client shall exhibit to OCB Media upon request evidence of such insurance cover.
- 6.4 Nothing in this Agreement shall limit the liability of either Party for fraud or for death or for personal injury caused by negligence.

7. Termination

- 7.1 Either Party may terminate this Agreement forthwith if the other Party enters into any arrangement or composition with its creditors, commits any act of bankruptcy or (being a corporation) if an order is made or an effective resolution is passed for its winding up (except for the purposes of amalgamation or reconstruction), or if a petition is presented to court, or if a receiver and manager, receiver, administrative receiver or administrator is appointed in respect of the whole, or any part of, the other Party's undertaking or assets or there are reasonable grounds for anticipating the occurrence of any of these events within the foreseeable future.
- 7.3 In the event that either Party commits any breach of or default in any of the terms or conditions of this Agreement, and fails to remedy such default or breach within thirty (30) days after the receipt of written notice from the other Party, the Party giving notice may at its option terminate this Agreement by sending notice of termination in writing to the other Party to such effect, and such termination shall be effective as of the date of the receipt of such notice.
- 7.4 The termination of this Agreement, however arising, will be without prejudice to the rights and duties of the parties accrued prior to termination. Clauses 2.3, 2.4,

3, 4, 5, 6, 7.4, 9 and 10 shall survive termination of this Agreement for whatever reason.

8. Force Majeure

- 8.1 Each Party shall be released from its obligations under this Agreement to the extent that its performance hereunder is delayed, hindered or prevented by Force Majeure.
- 8.2 If either Party is prevented or delayed in the performance of any of its obligations under this Agreement by Force Majeure, that Party shall forthwith serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to Force Majeure, and subject to Clause 8.3 shall have no liability in respect of the performance of such of its obligations as are prevented by the Force Majeure event during the continuation of such events, and for such time after they cease as is necessary for that Party, using all reasonable endeavours, to recommence its affected operations in order for it to perform its obligations.
- 8.3 The Party claiming to be prevented or delayed in the performance of any of its obligations under this Agreement by reason of Force Majeure shall use all reasonable endeavours to bring the Force Majeure event to a close or to find a solution by which the Agreement may be performed despite the continuation of the Force Majeure event.
- 8.4 If either Party is prevented from performance of its obligations for a continuous period in excess of three (3) months due to Force Majeure, the other Party may terminate this Agreement forthwith on service of written notice upon the Party so prevented, in which case neither Party shall have any liability to the other accept

that rights and liabilities which accrued prior to such termination shall continue to subsist.

9. Notices

- 9.1 Any notice required by this Agreement to be given to either Party shall be in writing and shall be served by being addressed to the address of the other Party stated in this Agreement or such other address as may from time to time have been notified by a notice given in accordance with this clause. Any notice to OCB Media shall be directed to the attention of Dr. Nicholas Blackwell.
- 9.2 Any such notice or other document shall be deemed to have been received by the addressee two (2) working days following the date of despatch of the notice or other document by post (five (5) working days, if sent by airmail) and if sent, sent by hand or courier or by facsimile or other electronic media, simultaneously with the delivery or transmission.

10. General

- 10.1 The formation, existence, performance, validity and all aspects of this Agreement shall be governed by and construed in all respects in accordance with the laws of England and the Parties submit to the exclusive jurisdiction of the courts of England.
- 10.2 It is understood that in the performance of this Agreement the Client will be acting in the capacity of an independent Client and that nothing in this Agreement shall be construed as creating any contract of employment or relationship of principal and agent between OCB Media and the Client.

- 10.3 This Agreement sets out the entire agreement and understanding between the Parties regarding the subject matter of this Agreement and supersedes all prior discussions, arrangements and agreements, whether oral or in writing or which may be inferred from the conduct of the Parties. Save as provided above, any amendment or variation to this Agreement should be made in writing and signed by both Parties.
- 10.4 The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision that shall remain in full force and effect. The Parties shall use their reasonable efforts to achieve the purpose of the invalid provision by a new legally valid stipulation.
- 10.5 This Agreement or any part thereof shall not be assigned or subcontracted by the Client whether voluntarily or involuntarily or by operation of law in whole or in part to any third party without the prior written approval of OCB Media.
- 10.6 The failure of either Party to exercise any right or remedy under this Agreement shall not be deemed to be a waiver of such right or remedy. Any waiver in respect of any breach of any provision of this Agreement that is made in writing shall be valid but shall not be construed to be a waiver of any succeeding breach of such a provision.
- 10.7 A person who is not a Party shall have no right under the Contracts (Rights of Third Parties) Act 1999 or otherwise to prevent the amendment of or to enforce any term of the Agreement.

EXECUTED by the authorised representatives of the Parties on the date(s) specified below.

SIGNED BY:

For and on behalf of **OCB Media Limited**

Name: Dr. Nicholas Blackwell

Position: Director

Date: XXX

SIGNED BY:

For and on behalf of XXX

Name: XXX

Position: XXX

Date: XXX

Schedule 1 - Services and Payment Details

Part A – Title of the Services:- [components]

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Part B - Objectives of the Services:- [objectives]

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Part C - Commencement Date:- [date]

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Part D - Completion Date:- [date]

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Part E - Detailed Statement of Work:-

Provision of digital content and associated technology to the Client for the sole purpose of delivering online medical educational materials to end-users. To cover:

- If provided, digital course content rebranded to include the Client logo and to align with the Client branding colour scheme.
- If provided, provision of the SCRIPT LMS, to be rebranded to include the Client logo and to align with the Client branding colour scheme. The supplied LMS will a wholly separate instance and will accessed through a sub-domain to be created by the Client specifically for the purposes of this Agreement.

- The Client to pay an annual fee for technical support, custom development, server hosting, as detailed in Part F of this Schedule.
- The Client is responsible for responding to and resolving all student queries of a non-technical nature.
- The Client is responsible for ensuring that all users who access the Learning Management System and course material are valid members of staff.
- The Client agrees not to charge, resell or sub-licence the service in part or in whole.

Part F - Payments:-

		£ Price	Due Date
Item 1:	[description]		
Item 2:	[description]		
Item 3:	[description]		