Dynamic

Dynamic off-the-shelf course content

Subscription Agreement and Service Level Agreement

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Statement of intent

Your organisation (and your employees) is referred to as 'the client' throughout this document. The aim of this agreement is to provide a basis for access and use of the off-the-shelf content. This agreement is contingent upon each party knowing and fulfilling their responsibilities.

Provision of the content

During the contract term Dynamic shall provide the client with access to a secure website to download the off-the-shelf content so that it can be used by the client on their LMS platform or similar learning platform. The client acknowledges that it is licensed to access, download and use the off-the-shelf content in accordance with the terms stated in this agreement and not for any other purpose or further use.

The client shall not permit any other persons, outside of the client organisation, to use the content unless the client has obtained prior written consent from Dynamic.

If the main contact ceases to be employed by the organisation, the client must notify Dynamic immediately and a suitable contact should be provided to allow continued access to the off-the-shelf content.

The client shall not: -

- permit any third party to access the off-the-shelf content;
- use the off-the-shelf content, demonstrate it, or provide access on behalf of, or for the benefit of, any third party in any way whatsoever;
- permit, facilitate or assist a third-party to access or use the off-the-shelf content;
- reverse engineer, decompile, amend, modify, vary, adapt, translate or perform any similar type of operation on the off-the-shelf content for any purpose or permit or allow any third party to do any of the foregoing.

Content, ownership and intellectual property

The off-the-shelf content and the intellectual property rights in respect of the same shall belong exclusively to Dynamic. Dynamic reserves the right to delete, move and edit any content at its discretion.

The content is intended for use as an educational tool and is not to be taken as a definitive guide to legislation or industry best practice. Reference to the off-the-shelf content is not a substitute for obtaining legal advice, professional qualification or for referring to the appropriate national and/or local policy guidance, legislation or regulations.

Period of the agreement

This agreement will commence from the date Dynamic provides the client with access to the off-the-shelf content library, and will continue for a 12-month period. At the end of the initial 12-month period, a new 12-month period will automatically commence on a rolling basis.

If the client fails to pay the fee in accordance with this agreement or commits any other breach of this agreement Dynamic may in its absolute discretion and without prejudice to any other rights which it may have, immediately suspend all future provision of services to the client and/or terminate this agreement without liability upon its part.

Review and termination of the agreement

This agreement may be reviewed annually by Dynamic. The client can terminate the agreement by providing a minimum notice in writing of three months. No refund is provided for “unused” portions of the provision for the remainder of that 12-month period.

Upon termination of this agreement by either the client or by Dynamic, the client shall immediately cease to use the off-the-shelf course materials. The client shall delete the course files held on the LMS platform or similar learning platform and remove any cache or store of off-the-shelf content held elsewhere, such as on a file server. User records on the LMS platform relating to access and completion of the materials may be retained by the client.

If requested by Dynamic, the client shall certify in writing to Dynamic that the course files have been deleted.

Changes to the agreement

Dynamic reserves the right to change or modify the terms and conditions applicable within the agreement. Such changes to the agreement will be effective from the next renewal of the agreement. Any changes resulting in an increase of the annual charge will also be effective from the next renewal of the agreement and a minimum notice period of 3 months will be provided by Dynamic.

Pricing

Dynamic will provide the client with access to all current and future off-the-shelf modules during the period covered by this agreement for the sum of £7,500.00 + VAT. This sum will be payable prior to the commencement of the 12-month period on 1st September 2021.

Warranty

Dynamic will provide the services under this agreement with the level of due care and diligence that might be expected from a provider operating within the elearning industry and within the constraints of providing SCORM 1.2 conformant software.

No representations or warranties are made by Dynamic in respect of the Dynamic off-the-shelf content.

To the maximum extent permitted by applicable law, all other warranties and representations not expressly stated in this agreement are excluded, including, but not limited to any implied warranty of merchantability, non-infringement and fitness for a particular purpose.

We do not guarantee that the Dynamic off-the-shelf content provided under this agreement will not be interrupted or be error free.

Liability

The Client will indemnify, defend and hold Dynamic and its officers, directors, agents and employees harmless from and against all claims, suits, demands, actions, proceedings, judgments, penalties, damages, losses, liabilities, costs and expenses (including, without limitation, reasonable legal and expert witness fees) resulting from any and all third-party claims against us arising from or relating to:

- any breach of a representation, warranty, acts or omission made by you; and
- any action or inaction by you or any of your contractors, agents or employees which caused or is alleged to have caused damage to the person or property of a third-party, including without limitation, third-party computer equipment.

Each of the parties must take reasonable steps to mitigate any claim for loss or damage it may take against the other under or arising out of this agreement.

In no event shall either party be liable to the other for any indirect, consequential or special losses or damages (exemplary or otherwise) arising out of or in connection with the performance or non-performance of its obligations under this agreement.

Except in respect of any obligation of confidentiality, in no event will the measure of damages against any party for any breach of this agreement, negligence or other action or contravention of any statute or law include, or be derived from:

- Any breach of this agreement to the extent that the breach is attributable to the prior default, negligence, misconduct or breach of the other party, its employees, or agents;
- Any amounts for any indirect, consequential or punitive damages of any parties, including third parties; or
- A Force Majeure Event.

Force majeure

Neither party shall have any liability under or be deemed to be in breach of this agreement for any delays or failures in performance of this agreement which result from circumstances beyond the reasonable control of that party. If such circumstances continue for a continuous period of more than 90 days, either party may terminate this agreement by written notice to the other party.

Law and jurisdiction

The parties hereby agree that this agreement shall be construed in accordance with English Law. Any dispute arising out of or in connection with this agreement shall be settled under the judicial system of England and Wales.

This agreement (which incorporates the Schedules annexed hereto) has been entered into by the parties on the date first stated.

Helpdesk service

Should the client have any difficulty in downloading or using the off-the-shelf content, the Dynamic helpdesk service is available to the named client administrator contact. There are three channels that designated administrators can use to contact Dynamic for support. The best channel to use is the web form as this automatically logs and tracks the query from the moment it is submitted.

- Web form – http://helpdesk.dynamicbusiness.co.uk/
  This is the best method as you can provide information in a structured way. A ticket will be automatically raised and you will be e-mailed the ticket number so you can monitor progress.

- @ Helpdesk e-mail – helpdesk@dynamicbusiness.co.uk
  Using this e-mail address will automatically raise a ticket and you will be emailed the ticket number so you can monitor progress. N.B. if including screenshot images, please do not embed the image in the body of the email, but instead include it as an attachment – either an image or in a Word document.

- Telephone – Call 0113 3230766
  This will direct you to our dedicated helpdesk team. If the query is simple and can be answered immediately, then we will do so. If it requires further investigation, then we will raise a ticket ourselves and allocate the query to a specific support team member. Again, you will be e-mailed the ticket number so you can monitor progress.

Hours of operation

The Dynamic helpdesk operates on UK business hours and will operate daily from 9.00am to 5.00pm Monday to Thursday and 9.00am to 4.30pm on Friday. The helpdesk will not be in operation outside of these days and times.

Support process

Support is provided to the designated client contact registered with Dynamic.

The off-the-shelf content is provided as standard conformant SCORM 1.2 zip packaged files. The off-the-shelf content has been tested on a fully SCORM compliant LMS and meets the requirements for SCORM conformance.

If the client is using the Dynamic LMS platform, then dynamic will fully support the use of the off-the-shelf content to ensure that it launches, runs correctly, bookmarks and tracks completion status.

If the client is not using the Dynamic LMS platform, then Dynamic will offer advice to the client on what checks to undertake and how best to troubleshoot the problem. However, Dynamic will not access the client's third party LMS platform and will not be able to run any diagnostic software on the client's third party LMS platform.

Signatures

SIGNED BY _____

For and on behalf of

Dynamic Business Services Ltd

Name (PRINT) _____

Position _____

SIGNED BY _____

For and on behalf of

The client

Name (PRINT) _____

Position _____